LABOR DISPUTE SETTLEMENTS

WAGE & SALARY STABILIZATION

War Labor Reports

TITLE REGISTERED U. S. PATENT OFFICE

Vol. 26, No. 3 Aug. 22, 1945 Pages 239-349

Regulations, Orders, and Decisions with Index-Digest

NATIONAL WAR LABOR BOARD
BUREAU OF INTERNAL REVENUE
OFFICE OF ECONOMIC STABILIZATION

Announcement

With this issue "Wage & Salary Stabilization—War Labor Reports" becomes "Labor Dispute Settlements—Wage & Salary Stabilization."

The change in title signalizes an extension of coverage to include decisions of the new arbitration agency which President Truman has stated will be set up in due time as successor to the War Labor Board. Coverage also will include regulations and other official material issued by whatever agency or agencies may eventually take over the stabilization functions of the War Labor Board and related bodies.

Decisions and regulations of the War Labor Board and other existing stabilization agencies will continue to be reported as at present until the new agencies take their place.

IN THIS ISSUE

(Continued on next page)

Decisions reported are cumulated and published periodically in bound volumes without change of page numbers

Published by THE BUREAU OF NATIONAL AFFAIRS, INC.
24th and N Sts., N. W., Washington 7, D. C.

IN THIS ISSUE

(Continued from front cover)

Rulings by National War Labor Board

Rulings by Regional Boards and Commissions

Labor Dispute Settlements—Wage & Salary Stabilization—War Labor Reports published weekly by The Bureau of National Affairs, Inc., 24th and N Sts., N. W., Washington 7, D. C., telephone DIstrict 2900. Subscription rate $156 a year. Entered as second-class matter October 21, 1942, at the post office at Washington, D. C., under the Act of March 3, 1879.

Cumulative

Table of Cases

Covering Volume 26 to Date

References are to pages

Action on Cases for Review by National War Labor Board

The following cases, decided by regional war labor boards or commissions and reported in War Labor Reports, were acted on by the National Board in the period covered by this volume.

The cases are arranged alphabetically. Each case is identified by name and number and is followed by a statement of the region or commission by which the case was originally decided, the volume and page reference in War Labor Reports where the decision is reported, the party on whose petition appeal was taken, and the action taken upon it. If the review is on the Board's motion, it is so stated.

Star (★) indicates new items or items on which action was taken since prior appearances on this list.

Addressograph-Multigraph Co. (No. 111-11614-D). Petition for review of decision of Regional Board V (23 War Lab. Rep. 327) denied.

Atlas Powder Co. (No. 111-2204-D [7-D-297]). Decision of Regional Board VII (21 War Lab. Rep. 196) amended on company petition for review (26 War Lab. Rep. 142).

City National Bank & Trust Co. of Chicago (No. 3866-D). Decision of NWLB (22 War Lab. Rep. 468) amended on company petition for review (26 War Lab. Rep. No. 2, XII).

Duplex Printing Press Co. (No. 111-8295-D). Petition for review of decision of Region XI (22 War Lab. Rep. 198) denied. Company petition on discontinuance of a 20-minute lunch period.

East Side Busses, Inc., et al. (No. 111-12585-D—Region XII). Decision of Region XII (25 War Lab. Rep. 181) amended on petition for review (26 War Lab. Rep. 93).

★Edward Ermold Co. (No. 111-6453-D). Decision of Regional Board II (20 War Lab. Rep. 629) amended on company petition for review (26 War Lab. Rep. 296).

Ellis-Klatscher Co. (No. 111-9922-D). Decision of Regional Board X (21 War Labor Rep. 485) amended on company petition for review (26 War Lab. Rep. 161).

Fairbanks Co. (No. 111-10504-D). Petition for review of decision of Regional Board II (22 War Lab. Rep. 595) denied. Company petition on following issues: unfair procedure, negotiation of fixed relationship between piece work rates and base rates, payment of average hourly earnings for temporary transfers, six paid holidays, liberalization of vacations (computation of pay), and retroactive date.

★F. H. Vahlsing, Inc. (No. 111-7180-D). Decision of Regional Board VIII (22 War Lab. Rep. 606) amended on joint petition for review (26 War Lab. Rep. 287).

General Motors Corp. (No. 111-4503-D). Decision of NWLB (22 War Lab. Rep. 484) amended on petition for review (26 War Lab. Rep. No. 1, XXXV).

★J-M Service Corp. (No. 111-6983-D). Decision of Regional Board VII (17 War Lab. Rep. 809) amended on joint petition for review (26 War Lab. Rep. 239).

Metz Mfg. Co. (No. 2179-D). Decision of NWLB (19 War Lab. Rep. 498) amended on petition for review (26 War Lab. Rep. No. 1, XXXVI).

Mines Equipment Co. (No. 111-7994-D). Decision of Regional Board VII (20 War Lab. Rep. 423) amended on joint petition for review (26 War Lab. Rep. 148).

National Lead Co. (No. 111-10369-HO). Petition for review of decision of Regional Board VII (22 War Lab. Rep. 195) denied. Company petition on method of computation of vacation pay issue.

Nelson Bros. Co. (No. 111-11191-HO). Petition for review of decision of Regional Board III (22 War Lab. Rep. 155) denied. Company petition on piece rates and vacation issues.

New York Herald-Tribune (No. 111-8188-D). Decision of Newspaper Commission (22 War Lab. Rep. 430) amended on petition for review (26 War Lab. Rep. 18).

Olympia Retail Merchants (No. 111-11213-D). Petition for review of decision of Regional Board XII (21 War Lab. Rep. 835) denied. Union petition on following issues: work-week, wages, and length of apprenticeship.

Pettibone-Mulliken Corp. (No. 111-5387-D). Decision of NWLB (26 War Lab. Rep. 162) amending prior directive order (24 War Lab. Rep. 625).

Phillips Petroleum Co. (No. 111-11916-D). Petition for review of decision of Regional Board II (22 War Lab. Rep. 581) denied.

★ Phillips Petroleum Co. (No. 111-11460-D [7-D-1514]). Petition for review of decision of Regional Board VII (23 War Lab. Rep. 128) denied.

Potash Company of America (No. 111-8946-D). Decision of Non-Ferrous Metals Com. (19 War Lab. Rep. 406) amended on joint petition for review (26 War Lab. Rep. No. 2, XIX).

★ Reno & Sparks, Nevada Grocery Industry (No. 111-8880-D). Decision of Regional Board X (21 War Lab. Rep. 308) affirmed on petition for review (26 War Lab. Rep. 296).

Reynolds Metal Co., Inc. (No. 111-10661-HO [5-HO-1012]—Region V). Decision of Region V (24 War Lab. Rep. 360) amended on petition for review (26 War Lab. Rep. 95).

Sheffield Farms Co., Inc. (No. 111-10431-D). Petition for review of decision of Region II (23 War Lab. Rep. 290) denied. Company petition on night-shift bonus of 5 cents per hour ordered for work performed on second and third shifts.

Southern Aircraft Corp. (No. 111-12882-D). Petition for review of decision of Regional Board VIII (23 War Lab. Rep. 459) denied. Company petition on issue of the meaning of the term grievance in contract.

Timken Roller Bearing Co. (No. 111-14-682). Petition for review of decision of Regional Board V (24 War Lab. Rep. 376) denied. Company petition on following issues: standard maintenance-of-membership compulsory check-off, initiation fees and dues, denial of management clause, denial of no-strike clause, hours of work, leaves of absence for union officers, and intents and purposes (supervisory employees).

U. S. Potash Co. (Nos. 111-9728-HO and 111-9243-HO). Petition for review of decision of Non-Ferrous Metals Commission (19 War Lab. Rep. 406) denied.

W. L. Maxson Corp. (No. 111-11295-D). Petition for review of decision of Regional Board II (23 War Lab. Rep. 604) denied. Company petition on incorporation of existing group insurance or hospitalization benefits in contract issue.

The President—

Executive Order No. 9599: Stabilization and Dispute Settlement During Reconversion Period

Issued Aug. 18, 1945

PROVIDING FOR ASSISTANCE TO EXPANDED PRODUCTION AND CONTINUED STABILIZATION OF THE NATIONAL ECONOMY DURING THE TRANSITION FROM WAR TO PEACE, AND FOR THE ORDERLY MODIFICATION OF WARTIME CONTROLS OVER PRICES, WAGES, MATERIALS AND FACILITIES

By virtue of the authority vested in me by the Constitution and the statutes of the United States, and particularly the War Mobilization and Reconversion Act of 1944, the First War Powers Act of 1941, the Second War Powers Act of 1942, as amended, and the Stabilization Act of 1942, as amended [25 War Lab. Rep., No. 3, V], and for the purpose of fully mobilizing the resources of the Government in this final stage of the war emergency, in order to promote a swift and orderly transition to a peacetime economy of free independent private enterprise with full employment and maximum production in industry and agriculture and to assure the general stability of prices and costs and the maintenance of purchasing power which are indispensable to the shift of business enterprises from wartime to peacetime production and of individuals from wartime to peacetime employment, it is hereby ordered as follows:

I.

1. The guiding policies of all departments and agencies of the Government concerned with the problems arising out of the transition from war to peace shall be:

A. To assist in the maximum production of goods and services required to meet domestic and foreign needs, (1) by assuring assistance in making available materials and supplies required for the production of such goods and services; (2) by providing assistance to the conversion and utilization of war plants and facilities, both privately and publicly owned; and (3) by providing effective job placement assistance to war workers and returning service men and women.

B. To continue the stabilization of the economy as authorized and directed by the Emergency Price Control Act of 1942, as amended, and the Stabilization Act of 1942, as amended, (1) by using all powers conferred therein and all other lawful means to prevent either inflation or deflation; and (2) while so doing, by making whatever modifications in controls over prices, wages, materials and facilities are necessary for an orderly transition from war to peace; and

C. To move as rapidly as possible without endangering the stability of the economy toward the removal of price, wage, production and other controls and toward the restoration of collective bargaining and the free market.

2. The departments and agencies of the Government shall take vigorous, concerted and uniform action toward these ends and pursuant to this Order, under the guidance and direction of the Director of War Mobilization and Reconversion.

II.

During the transition to a free economy, the Secretary of Agriculture, the Federal Loan Administrator, and the Director of Economic Stabilization shall not only take all measures required by law to support prices but shall take such further measures authorized by law as may be necessary to prevent any collapse of values or discouragement of the full and effective use of productive resources.

III.

The Price Administrator, and in the exercise of his price responsibilities under the law the Secretary of Agriculture, shall, subject to such directives provided for by law as may be issued by the Economic Stabilization Director, take all necessary steps to assure that the cost of living and the general level of prices shall not rise. Subject to such authority, the Price Administrator and, in the exercise of his price responsibilities under the law, the Secretary of Agriculture,

are authorized to make such adjustments in existing price controls as are necessary to remove gross inequities or to correct maladjustments or inequities which would interfere with the effective transition to a peacetime economy. In order that any price increases found necessary for these purposes will not result in an increase in the cost of living or in the general level of prices, the Price Administrator and the Secretary of Agriculture respectively shall (1) so far as is reasonable, practicable and necessary for this purpose, see that such price increases do not cause price increases at later levels of production or distribution, and (2) improve and tighten price controls in those fields which are important in relation to production costs or the cost of living in which in their judgment the controls have heretofore been insufficiently effective.

IV.

1. The National War Labor Board, and such other agencies as may be designated by the Director of Economic Stabilization with the approval of the Director of War Mobilization and Reconversion, are authorized to provide that employers may, through collective bargaining with duly certified or recognized representatives of the employees involved or, if there is no such representative, by voluntary action, make wage or salary increases without the necessity of obtaining approval therefor, upon the condition that such increases will not be used in whole or in part as the basis for seeking an increase in price ceilings, or for resisting otherwise justifiable reductions in price ceilings, or, in the case of products or services being furnished under contract with a federal procurement agency, will not increase the costs to the United States.

2. In addition to the authority to approve increases to correct gross inequities and for other specified purposes, conferred by Section 2 of Title II of Executive Order 9250 [11 War Lab. Rep. VIII; WCDS 32], the National War Labor Board or other designated agency is hereby authorized to approve, without regard to the limitations contained in any other orders or directives, such increases as may be necessary to correct maladjustments or inequities which would interfere with the effective transition to a peacetime economy; provided, however, that in dispute cases this additional authority shall not be used to direct increases to be effective as of a date prior to the date of this order.

Where the National War Labor Board or other designated agency, or the Price Administrator, shall have reason to believe that a proposed wage or salary increase will require a change in the price ceiling of the commodity or services involved, such proposed increase, if approved by the National War Labor Board or such other designated agency under the authority of this section shall become effective only if also approved by the Director of Economic Stabilization.

3. Officials charged with the settlement of labor disputes in accordance with the terms of Executive Order 9017 [4 War Lab. Rep. VIII; WCDS 21] and Section 7 of the War Labor Disputes Act [9 War Lab. Rep. VII; WCDS 5] shall consider the labor disputes which would interrupt work contributing to the production of military supplies or interfere with effective transition to a peacetime economy are disputes which interrupt work contributing to the effective prosecution of the war.

V.

The War Production Board shall move as rapidly as feasible, without endangering orderly reconversion and the stabilization of the economy to free business from its controls. During the transition it shall use all of its authorized powers to expand the production of materials which are in short supply; limit the manufacture of products for which materials or facilities are insufficient; control the accumulation of inventories so as to avoid speculative hoarding and unbalanced distribution which would curtail total production; grant priority assistance to break bottlenecks which would impede the reconversion process; facilitate the fulfillment of relief and other essential export programs; and allocate scarce materials or facilities necessary for the production of low-priced items essential to the continued success of the stabilization program.

Status of War Labor Board During Reconversion Period

Statement by the President, Issued Aug. 16, 1945

Our national welfare requires that during the reconversion period production of civilian goods and services go forward without interruption and that labor and industry cooperate to keep strikes and lockouts at a minimum. We must work out means for the peaceful settlement of disputes that might adversely affect the transition to a peacetime economy.

We have had an exceptionally good record of industrial peace during the war. We must take the necessary steps now to insure a continuation of this record in the reconversion period before us. We must also, in this period, continue the stabilization program, modifying it to meet the changes in our economy which are now taking place. To these ends:

1. In the near future I shall call a conference of representatives of organized labor and industry for the purpose of working out by agreement means to minimize the interruption of production by labor disputes in the reconversion period.

The foundation of our wartime industrial relations was an agreement between representatives of industry and labor who met at the call of the President immediately after Pearl Harbor. This agreement provided that "for the duration of the war, there shall be no strikes or lockouts" upon condition that a National War Labor Board be established for the peaceful adjustment of unsettled disputes. Pursuant to that agreement, the President, by Executive Order 9017 [1 War Lab. Rep. XVII; WCDS 19], created the War Labor Board, and Congress, in the War Labor Disputes Act [9 War Lab. Rep. VII, WCDS 5], confirmed and strengthened its authority.

The Board is an emergency agency. It effectiveness has been rooted in the wartime agreement which led to its establishment. As a result of that agreement, industry and labor, with but very few exceptions, have voluntarily accepted the Board's decisions in the disputes which have been certified to it as affecting the war effort. A new industry-labor agreement to minimize interruption of production by labor disputes during the reconversion period ahead of us is imperatively needed.

2. Pending the completion of the conference and until some new plan is worked out and made effective, disputes which cannot be settled by collective bargaining and conciliation, including disputes which threaten a substantial interference with the transition to a peacetime economy, should be handled by the War Labor Board under existing procedures. For that interim period, I call upon the representatives of organized labor and industry to renew their no-strike and no-lockout pledges, and I shall expect both industry and labor in that period to continue to comply voluntarily, as they have in the past, with the directive orders of the War Labor Board.

3. The Stabilization Act is effective until June 30, 1946 [25 War Lab. Rep., No. 3, V]. During its continuance, wage adjustments which might affect prices must continue to be subject to stabilization controls. With the ending of war production, however, there is no longer any threat of an inflationary bidding up of wage rates by competition in a short labor market. I am therefore authorizing the War Labor Board to release proposed voluntary wage increases from the necessity of approval upon condition that they will not be used in whole or in part as the basis for seeking an increase in price ceilings. Proposed wage increases requiring price relief must continue to be passed upon by the Board.

4. The reconversion from wartime to peacetime economy will undoubtedly give rise to maladjustments and inequities in wage rates which will tend to interfere with the effective transition to a peacetime economy. For the remaining period of its existence, the Board should be given authority to deal with these maladjustments and inequities, whose scope and nature cannot be clearly foreseen. I am therefore issuing a new Executive Order [26 War Lab. Rep., No. 3, V] which will carry forward the criteria for passing upon wage increases as originally laid down in Executive Order 9250 [11 War Lab. Rep. VII; WCDS 32], and which will also vest in the Board authority to approve or direct increases which are necessary to aid in the effective transition to a peacetime economy. The new Executive

Order will continue the previous requirement that any proposed wage increase affecting prices, if approved, or directed by the Board, will become effective only if also approved by the Director of Economic Stabilization.

5. The War Labor Board should be terminated as soon after the conclusion of the forthcoming industry-labor conference as the orderly disposition of the work of the Board and the provisions of the War Labor Disputes Act permit and after facilities have been provided to take care of the wage stabilization functions under the Act of Oct. 2, 1942.

6. Meanwhile, the strengthening of the Department of Labor and the unification under it of functions properly belonging to it are going forward under plans being formulated by the Secretary of Labor. In these plans particular stress is being laid on the upbuilding of the U. S. Conciliation Service. With the return to a peacetime economy and the elimination of the present temporary wartime agencies and procedures, we must look to collective bargaining, aided and supplemented by a truly effective system of conciliation and voluntary arbitration, as the best and most democratic method of maintaining sound industrial relations.

Executive Order No. 9600: Premium Pay on Victory Holidays

AMENDING EXECUTIVE ORDER NO. 9240.
Issued Aug. 18, 1945

By virtue of the authority vested in me by the Constitution and the statutes, it is ordered that Section 1B of Executive Order No. 9240 of September 9, 1942 [8 War Lab. Rep. XXVII; WCDS 20] entitled "Regulations Relating to Overtime Wage Compensation", be and it is hereby, amended to read as follows:

"No premium wage or extra compensation shall be paid for work on customary holidays except that time and one-half wage compensation shall be paid for work performed on any of the following holidays only: New Year's Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, August 15, 1945, August 16, 1945, and either Memorial Day or one other such holiday of greater local importance."

Executive Order No. 9601: Revocation of Premium Pay Order,

Issued by the White House, Aug. 21, 1945

REVOCATION OF EXECUTIVE ORDER 9240, AS AMENDED, ENTITLED "REGULATIONS RELATING TO OVERTIME COMPENSATION"

By virtue of the authority placed in me by the Constitution and the statutes, it is ordered that Executive Order No. 9240, as amended [8 War Lab. Rep. XXVII, 26 War Lab. Rep., No. 3, VIII, WCDS 20] entitled "Regulations Relating to Overtime Wage Compensation", is hereby revoked, effective as of the date of this order.

War Labor Board—

Wage Adjustments: Reconversion Policy

Statement of National War Labor Board, Including Instructions to Subsidiary Agencies, Issued Aug. 17, 1945

On Aug. 16, 1945, upon receipt of the statement by the President of the same date [26 War Lab. Rep. No. 3 VII], the National War Labor Board took the following actions:

(1) Upon receipt of the new Executive Order [Executive Order 9599, 26 War Lab. Rep., No. 3, V] which will be issued to carry out the policies outlined in the President's statement, a general order of the Board will be issued [General Order No. 40, 26 War Lab. Rep., No. 3, X] providing in creases may be made without the approval of the Board upon the condition that such increases will not be used, in whole or in part, as the basis for seeking an increase in price ceilings or for resisting otherwise justifiable reductions in price ceilings or, in the case of products or services being furnished under contract with a federal procurement agency, will not increase the cost to the United States; provided, however, that such increases are agreed to by the duly certified or recognized representative of the employees involved if there is such representative.

(2) Pending the issuance of the new general order, the staffs of the National Board, regional boards, and other Board agencies are directed to sort out all Form 10 applications for wage or salary increases not involving price relief that are before the agency either for original action or on appeal, and to mimeograph and prepare for mailing a communication to each of the applicants regarding the effectuation of their applications without the necessity of Board approval. When sent out, after issuance of the new general order, a copy of the communication should be attached to the Form 10 to which it relates, and the Form 10 should be retained in the files of the Board agency.

(3) New and pending Forms 10 requiring price relief are to be processed under the provisions of the forthcoming Executive Order which, as described by the President "will carry forward the criteria for passing upon wage increases as originally laid down in Executive Order 9250 [11 War Lab. Rep. VIII, WCDS 32], and which will also vest in the Board authority to approve or direct increases which are necessary to aid in the effective transition to a peacetime economy."

(4) The Board's general orders will be revised and reduced in number to conform to the new policies contained in the President's statement. All Board agencies will be supplied with

the revised texts upon their issuance by the Board.

(5) In dispute cases in which the vote on the wage issues has not been completed by the Board or a Board agency prior to the close of business on Aug. 16, 1945, the new wage policy will be applied as soon as the new Executive Order has been issued, but such application will not be retroactive to any date earlier than the effective date of the Executive Order. Dispute cases in which the vote on the wage issues was completed by the Board or a Board agency prior to the close of business of Aug. 16, 1945, will be completed in terms of the policy which prevailed as of the date the vote was taken even if the directive order has not yet been transmitted to the parties, and the parties should be notified of the basis on which final action has been taken.

(6) Disputes appeals and appeals in Form 10 cases requiring price relief are to be handled as expeditiously as possible by all Board agencies with the objective in mind of forwarding all appeals to the National Board within the next 30 days. As stated above, the old wage policy is to apply to all cases on appeal which were decided prior to the close of business on Aug. 16, 1945.

Regulations, Part 803, General Orders

Issued by War Labor Board, Aug. 20, 1945

GENERAL ORDER NO. 40

Sec. 803.40—Voluntary Wage Agreements

Pursuant to the authority granted to the National War Labor Board by Sec. I of Title IV of Executive Order 9599, dated Aug. 18, 1945 [26 War Lab. Rep., No. 3, V], the Board hereby enacts General Order No. 40 as follows:

(a) Employers may, through collective bargaining with duly certified or recognized representatives of the employees involved or, if there is no such representative, by voluntary action, make wage or salary increases, without the necessity of obtaining approval therefor, upon the condition that such increases will not be used in whole or in part as the basis for seeking an increase in price ceilings or for resisting otherwise justifiable reductions in price ceilings or, in the case of products or services being furnished under contract with a federal procurement agency, will not increase the cost to the United States.

(b) The provisions of Par. (a) above shall be effective as of Aug. 18, 1945, but this shall not preclude the selection by the party or parties of any earlier date as the effective date of the wage or salary increase. The provisions of this general order shall not, however, operate as an approval of any wage or salary increase put into effect before Aug. 18, 1945, and prior to receipt of any approval required by the Stabilization Act of Oct. 2, 1942 [25 War Lab. Rep. No. 3, V], or the orders or regulations issued thereunder.

(c) Wage or salary increases referred to in Par. (a) above may be made notwithstanding any previous denial or modification of an application for approval thereof by the National War Labor Board or its agencies.

Questions and Answers on Postwar Wage Stabilization and Dispute Settlement by War Labor Board

ED. NOTE: *Below are excerpts from the transcript of a press conference held under the chairmanship of George W. Taylor, chairman of the War Labor Board, on Aug. 17, 1945, following announcement of the new transition wage stabilization and dispute-settling function of the Board by President Truman on Aug. 16, 1945 (See p. VII). The excerpts were made by the editors of War Labor Reports.*

DR. TAYLOR: We thought we'd better sit down and chat over some questions that must have arisen in your mind about this statement by the President. The effectuating Executive Orders have not been received as yet, but we thought we would go ahead anyway and talk about this program.

First, the Board as a group feels this is an exceptionally fine program,

and we think it is a fine program because of a number of factors. First of all, as far as the Board is concerned, it provides a means of orderly liquidation of the wartime responsibilities of the War Labor Board. Many times in the past we have all said that this Board had no intention to perpetuate itself and that it didn't think that the kind of a Board we operate should continue on into peacetime. The Board is unanimously of that feeling now, and we see in this program a means of orderly liquidation of the work of the Board.

Another aspect of it which pleases the Board members is, we feel it is entirely sound in the emphasizing of voluntaryism and setting up procedure for agreement of labor and industry as to the basis upon which they should proceed in the future. We feel that is sound because we know what a strong foundation stone our Board had in going through the period of the war on a voluntary no-strike, no-lockout agreement, which was designed for the necessities of that period and which indeed served the country well. So that there are those aspects of it that seem so very sound to the Board.

I'd like to particularly comment on one aspect of this new policy. That is, when the effectuaing Order is received, which will release voluntary cases not requiring a price increase, there will be immediately 16,000 cases now before the Board upon which the Board will not need to act. I don't think we will return them to the parties. We are going to notify the parties that those cases need not have prior Board approval before the wage increases that the parties want to make are made effective.

We are very happy to be able to do that. When on Oct. 3, 1942 [4 War Lab. Rep. VII; WCDS 21], it was decided that employers who wanted to make a wage increase, wanted to do it even though it wouldn't require a price increase, should be prevented from doing so in the overall interest, we really embarked upon a step that was new for this country.

Since that time we have ruled on 454,000 applications of employers. Some 16,000 of those the union joined in, but it was some 450,000 applications, most of which did not require a price increase. The employer wanted to make them, agreed with the union or voluntarily on their own initiative wanted to make them.

It became necessary in the interest of winning the war to come to the War Labor Board and say "Is this wage increase we want to make compatible with the stabilization program?" We are very happy to be able to relieve that restriction. I think that has been a particularly irksome one for some people, too. It will make it unnecessary for the lawyer who wants to raise his stenographer —he doesn't have to come to the Board any more to do it. Or the office that wants to make adjustments in the rates of pay of a few of its people—it relieves them of the necessity of coming to the Board so it cuts through a great deal of red-tape and regulation.

I was wrong. I said 450,000 cases, voluntaries, we have ruled on. I said 16,000 of them were with the union joining in. It was 26 per cent of them. I was wrong in that figure. It was about 100,000 in which the union had joined instead of the 16,000 I mentioned.

Q.: The 16,000 are the cases before the Board?

DR. TAYLOR: 16,000 are those cases that are now before us. All but 97 of them can receive immediate approval without any further Board action so that our backlog problem gets a very quick solution as respects those items.

* * * * *

Q.: Just what will an employer have to do in order to increase the pay of his workers if no price increase is needed?

DR. TAYLOR: Pay them.

Q.: Will he have to certify anything?

DR. TAYLOR: He will not have to certify anything. He will not be able to use those increases that he gives in a subsequent claim for a price increase. That's all. He must understand that, that he can't come in subsequently and say "I raised wages. Therefore, I want a price increase."

Q.: He won't have to report to the Board that he has made the wage increase?

DR. TAYLOR: No, he will not.

* * * * *

DR. TAYLOR: The Board has made—I think the courts call it a recommendation that we make, isn't it—the Board has made recommendations in almost 18,000 cases, and they have been voluntarily accepted. They have

been voluntarily accepted because of the fact that people wanted to accept them and get on with the war.

We are hopeful and we are trusting and we feel sure of the fact that, during this interim period, the same patriotic motives will prevail and will impel people to accept decisions of the War Labor Board until a new basis of operations is developed. It is a transition period where the Board believes that the same motives which prompted acceptance of its recommendations in the past will result in acceptance of its recommendations during this interim period.

I am quite willing to say to you that maybe there will be a few more difficulties here and there, but none of us on the Board expect a rush of strikes.

There has been great restraint shown in the large body of American labor in not engaging in strikes and great restraint in the large body of American industry not engaging in lockout and accepting War Labor Board decisions even though one party or the other felt that it was not quite right. They went along with it in the broader interest.

I have no doubt that we will have the same acceptance of those cases which have to be certified during this interim period. I wouldn't expect that the Board would be deluged with a great number of cases during this time because, as I mentioned to you, it is a period of orderly liquidation in the minds of the Board.

I think the certification of cases has to take that in mind, that is, they should be adapted to the cases which the Board can handle during the period which it still has to continue in operation.

Q.: How long will that period be, do you estimate?

DR. TAYLOR: Can I guess with you a little bit along these lines? The Board conducts two functions really and they are quite different functions. One is under 9017, reenforced by the War Labor Disputes Act [9 War Lab. Rep. VII; WCDS 5] to settle disputes. The Board is to continue in existence by the Act of Congress six months after the cessation of hostilities. Now, during that period of time, the Board will have to wind up its cases and, under the new program, would still have to handle those disputes which are vital to the reconversion program.

There is another function which the Board has to perform, and that is the wage stabilization one, and our responsibilities devolve from the Oct. 2, 1942, Act of Congress which extends until June 30, 1946 [25 War Lab. Rep., No. 3, V]. Up until that time, under present rules, wage increases which require a price adjustment, voluntaries as well as certain wage decrease cases, are still subject to approval of this Board or some other agency. So I would say, if no other agency were designated to undertake the wage stabilization functions, the Board would continue until June 30, 1946, on that function.

As respects the dispute settling function, six months after the cessation of hostilities. I think it is fair to say, and I believe I can say this for the entire Board, that once the dispute settling function is no longer with the Board, we would think that some other agency should be set up to handle the wage stabilization function. I believe that would be generally the view of the Board all around so that, when we are looking at our continued existence then, I think we pay most attention to the War Labor Disputes Act, which talks about six months after the cessation of hostilities.

* * * * *

DR. TAYLOR: Basically, what the Board feels it wants to do on this whole dispute business; we just think that, with V-J Day coming as it did, to suddenly leave a void in this field in which the Board has been handling disputes would not be conducive to the general program of keeping industrial relations stabilized because that has been our job—to keep industrial relations stabilized.

We think that, if, during this interim period, for types of cases which might interfere with orderly conversion, access to the Board can be held out, it will be a great help in effecting a proper transition over to a full peacetime economy.

We realize fully some of the difficulties that are going to be faced by the Board and by the people in getting over this interim period. We think this program on disputes is so much better than a void and can be so much more effective than nothingness that we should follow down that road until the labor-management conference steps up and says, "From here on out this is the way we think disputes can be diminished."

Q.: Do you contemplate taking only certain types of disputes?

DR. TAYLOR: I indicated that I think the Board has to consider itself as to what type of case it would take on. I think for a liquidating agency it would not be good housekeeping to have an influx of cases which might not be completed before the agency completes itself; so I would expect discretion on the part of labor in expecting certifications and on the Board taking over the case.

I think it is a period where great restraint has to be shown in the type of case which will come up to the War Labor Board and in the acceptance of a decision which comes on to them.

I think a great call goes out, again, for patriotic restraint while we are getting over this transition period.

* * * * *

Q.: Are you going to say anything about the application of the various stabilization criteria in dispute cases? I mean the Little Steel formula.

DR. TAYLOR: Yes. We really go back to 9250 [11 War Lab. Rep. VIII; WCDS 32]. Under Executive Order 9250 the Board had a great deal of judgment in the determination of labor disputes or wage disputes that came before it. Under this proposed plan, the Board again would have a great deal of judgment in the deciding of cases.

Q.: The Little Steel formula is out the window?

DR. TAYLOR: Just hold that a minute.

When we started on this preparation for war, we just could not anticipate the kind of economic problem that would be faced and the wage rules that would be adaptable to meeting those enocomic problems.

Again we stand here, very humbly, I assure you, looking ahead at great economic problems, that folks just aren't smart enough to sit down around the table and think up all of the kinds of problems that are going to be faced during that period that lies ahead. And it is for that reason that this latitude has been given to the Board.

Now, on voluntaries that do not affect prices, adjustments above the Little Steel formula certainly might be made effective in particular situations, and they will not be precluded from making them effective by the Little Steel formula; it can be overcome in those cases.

And I have no doubt, where economic conditions in the reconversion period are of such a nature as to result in equities which we do not now foresee which would require adjustments above the Little Steel formula—I have no doubt about the authority of the Board to make such adjustments.

Q.: The Board can now ignore or break the Little Steel formula? It has the authority to do that?

DR. TAYLOR: I did not say that. I said, where the Board finds an inequity arising out of these new conditions of reconversion, it has a duty to correct such inequities, the Little Steel formula notwithstanding. I think the emphasis is on correcting gross wage inequities which might arise during the reconversion period. That is the function of the Board during this time, and they are inequities which cannot now be fully seen.

* * * * *

Q.: Are you still going to use wage brackets?

DR. TAYLOR: We are not going to use wage brackets—if you find that to correct an inequity arising during the reconversion period or to facilitate reconversion adjustment under the bracket is necessary to eradicate gross inequities, the Board will eradicate the gross inequities, brackets notwithstanding.

Q.: Does the Board consider that the changes that are now taking place are the same as mentioned in all these reopening clauses, in the event that a change takes place? Is this the kind of an event which would permit the unions to reopen contracts?

DR. TAYLOR: I would not like to answer that in general because these reopening clauses vary materially.

Q.: I mean the standard clause.

DR. TAYLOR: It may be reopened for collective bargaining.

I would like the Board to answer that, but it is my own opinion that it does.

Q.: Certification of cases will still be made by the Department of Labor to the Board?

DR. TAYLOR: Yes, they will, and of course we will have to work out the basis upon which certification shall take place. That is a matter which the Board itself has not had an opportunity to discuss; it is a matter that

will be before the Board, and then we expect to work that out with the Secretary of the Department of Labor, and we are hoping to do that very quickly.

* * * * *

Q.: Will you continue to subpoena?

DR. TAYLOR: I don't know. I think we have the continued right to subpoena under the War Labor Disputes Act. As to whether the Board will find it necessary in particular cases I don't know, but I am told by our counsel that the Board continues to have the subpoena right.

Q.: Will it be necessary to continue the War Labor Disputes Act in order to maintain this Board?

DR. TAYLOR: The Board feels this way. I think that is a question I would like to answer at some little length. The Board feels it exists and functions by virtue of the voluntary no-strike, no-lockout agreement. That is really the basis of the Board's operation.

We think that with V-J and the basis of the Board's operation being subject to change, the Board does not think it should continue in existence as it has in the past without that same voluntary no-strike, no-lockout pledge. Everybody is hopeful in the management-labor conference there will be some new basis for continued relations minimizing labor disputes worked out by agreement of the parties. It is the no-strike, no-lockout pledge that was the real basis of the Board's work, and it was the real basis of compliance with the Board's orders.

Q.: You don't consider that in effect any more, do you?

DR. TAYLOR: I think the no-strike, no-lockout pledge for all practical purposes is not in effect after V-J Day. When you say now, I don't know whether these fellows would say it went up to actual V-J Day, but, for all practical purposes, the former no-strike, no-lockout pledge is not in existence. That is my understanding of it, and I think that is important in answer to your question about compliance questions, too, because undoubtedly noncompliance would result in the possible use of strike or lockout.

Q.: That would also then apply to cases that might be certified but one party doesn't want the case to come before the Board; he would rather settle it by economic pressure. If the Board then decides it had jurisdiction, would it force him to come before the Board if it is essential to reconversion?

DR. TAYLOR: I don't know. The fact of the matter is the request of the President is for the parties voluntarily to renew their no-strike, no-lockout pledge and voluntarily accept the decision of the War Labor Board. That is what we are working on, that request for voluntary compliance. I think the whole atmosphere of the Board's work will be away from compulsion and emphasis upon voluntary acceptance, voluntary restraint against economic action during this very trying period through which the country is going, voluntary acceptance of the Board's decision. I think it is around voluntarism that the Board will conduct its operations and not on the basis of compulsion or attempt to force compliance or jurisdiction.

Q.: The policy in the past was to refuse to go into the merits of a case while a strike was in progress. I believe that was based on the no-strike, no-lockout pledge. If there is a strike, what will the policy be?

DR. TAYLOR: I think that the policy of the Board requires a reconsideration by the Board, and I shall ask the Board to reconsider that policy at an early moment.

* * * * *

Q.: Last night Truman asked for another no-strike pledge. I gather from what you said that you don't expect that to be renewed until some time after this labor-management conference.

DR. TAYLOR: Oh, no. I would expect that the call for renewal is particularly important prior to the conference, between now and the conference.

Q.: But you don't expect any immediate acceptance of the pledge?

DR. TAYLOR: I would expect so, yes. I would expect that there would be immediate consideration of that on the part of the unions and the immediate response. I think it is particularly between now and the conference that the restraint of voluntarily not striking or locking out is of urgent importance because we are all hopeful that, after the industry-labor conference, a new basis will be involved. None of us want to keep the no-strike, no-lockout pledge any longer than is absolutely necessary. The call for it, as I understand it, is now to be reaffirmed until the conference, after which, instead of the no-strike, no-lockout pledge, there will be some new basis of operations. So it is particu-

larly in the interim that the no-strike, no-lockout pledge is important.

* * * * *

Q.: You will have to decide again in a particular case whether you want to invoke the Little Steel formula?

A: That's right. My own reaction —I don't know whether the Board will agree—I don't think that in this period the Board should make an effort to lay down long term policies and to determine basic conditions of operation.

Q.: That means no arbitrary yardstick in the Boards—

A: I think it is fair to interpret it like that. A Board that is in process of liquidation should not make an effort to lay down long term policies. We think that the mechanism that the management-labor conference will develop, if any, might be faced with the problem of that sort ultimately or something Congress is going to determine. I don't think that this Board at this time should attempt to make long term general policies.

Our point is this: If disputes arise during this interim period, if they might affect orderly transition, we'll look at them, and, if there are inequities, gross inequities that need correction during this period of time, we will correct those inequities, Little Steel formula, brackets, notwithstanding, as a transition policy solely.

* * * * *

Q.: Everybody talks in general terms of high wages, full employment. How about the talk of compensating people for loss of overtime, that sort of thing.

A: I just said that I don't think this Board at this stage should try to call the turns for long time policies.

On that score, I think you will see from the Board's past reports to the President and our decisions that we surely think the first step along those lines should be something about substandard wages. The Board has indicated a number of times that it thinks [the] substandard wage question needs attention.

* * * * *

Q.: You said a while ago that you thought some other agency could handle stabilization after you are liquidated. Do you have any other agency in mind?

A.: Anybody. All I'm saying is this. Here we have a War Labor Board, a tripartite setup, with folks who have been here for a long period of time now. If the function of the Board were solely to pass on the wage stabilization features, it might very well be another board; it might very well be in the Department of Labor or another independent board or a tripartite board by agreement. Any number of ways would be a feasible way to handle it.

I don't mean to imply that that might not be a very important board because this wage decrease question arises under the Stabilization Act, which, as you know, provides that there shall be no decreases for particular work from the highest wage paid between Jan. 1, 1942, and Sept. 15, 1942. It is a whole area of wage stabilization which has not been worked out yet. It has not been worked out because there have not been wage decrease cases. It may very well be that there will be wage decreases that will make that function of the Board or a new agency of great importance.

* * * * *

Q.: Can any employers cut wages tomorrow?

DR. TAYLOR: No, an employer cannot cut wages without War Labor Board approval, and the cutting of wages would be under the Oct. 2 Act. There is no authorization given for wage decreases. The authorizations here are for wage increases, and the wage decrease question, as I indicated earlier, is an area that has not been worked out, largely because there has not been any widespread demand for it. It has been the rare case indeed where there has been a request to cut wages.

Q.: How about downgrading?

DR. TAYLOR: You will have to refer to the Act. As I recall it, it said for particular work.

Q.: So that people could be downgraded?

DR. TAYLOR: Downgrading is not precluded, but the Act says for particular work, as I recall it, the highest wage paid between Jan. 1, 1942, and Sept. 15, 1942, should not be cut. Now, there are various interpretations of that Act of Congress by different people, and I have no doubt that that will be worked out, probably by this Board in this interim period, if we are faced with that problem.

Q.: And that continues until June 30?

DR. TAYLOR: Until June 30, 1946. That continues under the present Act.

Premium Rates, Time Not Worked on Victory Holidays

Resolution of National War Labor Board, Issued Aug. 16, 1945, WLB Press Release B-2193A

The following resolution was passed by the National War Labor Board today:

With regard to the period between 7 p.m., Aug. 14, 1945, and 12 p.m., Aug. 16, 1945, employers shall not be considered to have violated the wage stabilization laws if they:

(1) Excused employees from work without loss of pay;

(2) Considered the regularly scheduled hours not worked as hours worked for the purpose of computing overtime pay;

(3) Compensated employees who were retained during such periods for hours worked at premium rates equivalent to the rates paid by the employer for work performed on holidays or granted compensatory time off in lieu of such premium rate payments.

This action supersedes that taken by the Board on Aug. 13, 1945 [26 War Lab. Rep., No. 2, X].*

* ED. NOTE: This new resolution was necessitated by events which occurred subsequent to the resolution of Aug. 13, 1945. The White House erroneously issued a statement which was later withdrawn declaring Aug. 15 and 16 to be legal holidays.

On Aug. 18 Executive Order No. 9600 [see p. VIII], amending Executive Order No. 9240 [8 War Lab. Rep. XXVII; WCDS 20] was issued. It provided for payment of time and one-half on Aug. 15 and 16 by employers subject to the Order.

Regulations, Part 803, General Orders, Amended

GENERAL ORDER NO. 4 *

Extension of General Order No. 4

Sec. 803.4 — Wage Adjustments for Small Business.

(d) * * *

Extension of General Order No. 4

The National War Labor Board, under this paragraph, has approved the following exceptions to the exemption provided for in Par. (a) of this order:

(55) All employers in the retail fur industry in Allegheny County, Pa. (Approved Apr. 11, 1945)

(56) All employers in the bakery industry in Cuyahoga County, O. (Approved Apr. 12, 1945)

(57) All employees in the fur industry in Boston, Mass. (Approved Apr. 18, 1945)

(58) All employees in the logging industry and the saw mill industry in Gogebic, Ontonagon, Houghton, Keewenaw, Paraga, Iron, Marquette, Dickinson, Menominee, Delta, Alger, Schoolcraft, Luce, Mackinac, and Chippewa Counties, all in the state of Michigan; and Douglas, Bayfield, Ashland, Iron, Vilas, Forest, Florence, Marinette, and Oneida Counties, all in the state of Wisconsin, including the logging industry area, with the following specific provisions:

(1) That no employee presently in the service of an employer in the logging and saw mill industries in the area referred to above heretofore exempt under General Order No. 4 shall have his or her compensation reduced by reason of this action so long as he remains in the service of that employer.

(2) That new employees of any such employers shall be hired either:

(a) At the rates the employer had in effect Oct. 3, 1942, in respect to wages, or Oct. 27, 1942, in respect to salaries, or

(b) At the rates properly adjusted where no approval is required under the appropriate general order of the National War Labor Board, or

(c) At the rates approved for the particular employer by the Eleventh Regional War Labor Board. (Approved Apr. 16, 1945)

(59) Small firms in the metal plating and enameling shops in Los Angeles County, Calif., which shall be defined as establishments in which one or more employees are engaged

* ED. NOTE: This compilation includes all exceptions to General Order 4 issued subsequent to publication of "Regulations, Part 803, General Orders and Interpretations" at 21 War Lab. Rep. XXXVII. The latest amendment in this group is No. 68, issued by WLB Press Release B-2190, Aug. 10, 1945.

in the electro-plating, plating, or enameling of metal products, and establishments in which a majority of the employees are engaged in the polishing of such products. (Approved Apr. 23, 1945)

(60) Summer resorts including resort hotels, boarding houses, adult camps operated for profit, dude ranches, and similar types of establishments throughout New York State and northern New Jersey inclusive of the counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren. (Approved May 11, 1945)

(61) Restaurants throughout New York State and Monmouth County, N. J., which are open only between May 1 and Oct. 1 (Approved May 11, 1945)

(62) Commercial garages performing repair work for the public in the metropolitan Kansas City area. (Approved May 11, 1945)

(63) All shops engaged in welding work in the oil well servicing industry in the County of Lea, State of New Mexico. (Approved May 24, 1945)

(64) The general automobile repair industry in the metropolitan areas of Chicago (defining Chicago as including all of Cook County, Ill., and Lake County, Ind.), Milwaukee, Wis.; Indianapolis, Ind.; and the Twin Cities, Minn.; and also Peoria, Ill. (Approved June 6, 1945)

(65) Retail hardware stores in San Francisco and Alameda Counties, Calif., according to the following definition: Retail hardware stores—stores selling at retail any combination of the basic lines of hardware such as tools, builders hardware, and paint and glass; housewares and household appliances; and cutlery. Does not include stores selling paint only, or paint, glass, and wallpaper. (Approved June 20, 1945)

(66) Cleaning and dyeing industry within the city of San Jose, Calif., according to the following definition: Establishments engaged in dry cleaning, dyeing, and/or pressing apparel and household fabrics. (Approved June 20, 1945)

(67) Export packaging establishments in the counties of Los Angeles, San Francisco, San Mateo, Alameda, Contra Costa, and Solano, and the City of Stockton. 'Such establishments are defined as those primarily engaged in packng, crating, or otherwise preparing goods for overseas shipment immediately prior to placement of goods at the ship's side. (Approved May 29, 1945)

(68) All employers in the automotive repair industry in Harris County, Tex. (Approved Aug. 6, 1945)

Cases Previously Published in Which Opinions Have Subsequently Been Issued

PHILADELPHIA TRANSPORTATION CO.—

Decision of Regional Board III (Philadelphia)

In re PHILADELPHIA TRANSPORTATION COMPANY [Philadelphia, Pa.] *and* TRANSPORT WORKERS UNION OF AMERICA, LOCAL 234 (CIO). Case No. 111-14560-D, July 17, 1945 (opinion made public Aug. 6, 1945).*

Dissenting Opinion of Employer Members

PRELIMINARY STATEMENT

BRECKENRIDGE and TRAUERNICHT, Employer Members: The decision of the majority of the Board in this case departs so widely from the guiding principles of wage stabilization policy, particularly as expressed in the Vinson directive of Mar. 8 [22 War Lab. Rep., No. 2, XXIII; WCDS 537] and the Davis supplement thereto of Apr. 25, [23 War Lab. Rep., No. 4, V], and moreover represents such a complete failure to recognize the established practices of the entire transit industry, that the industry members feel impelled to state the reasons for their dissent with respect to the several more significant issued contained in the order.

Before discussing these issues, it would seem appropriate to point out that there are two practical aspects which the majority chose to ignore in reaching the decision regarding shift premiums, overtime, payment for uniforms and work clothes, and retroactivity.

* ED. NOTE: For the directive order, opinion of the Board, and panel report in this case, see 26 War Lab. Rep. 120.

First is the unchallenged fact that the transit industry is, in normal times, a marginal industry operating with little if any margin of profit due to competition from the private automobile. As we approach the time when gasoline and tire restrictions are lifted, increased costs for labor imposed in wartime will constitute a serious handicap to the ability of many transit companies to stay in business. Despite this fact, however, the Board has by so-called "fringe adjustments" added a very large sum of money to this company's annual operating costs, and proposes to establish precedents which will have serious unstabilizing effects on the transit industry.

The second is that there can be no valid comparison between the transit industry and other industries such as manufacturing, and for that reason there is no justification for imposing fringe adjustments on this industry just because they are the practice in other industries. It is to be noted that various Acts of Congress and Presidential Orders in connection with rates of pay and hours of work—such as the Fair Labor Standards Act, the Walsh-Healey Act, and Executive Order No. 9240 [8 War Lab. Rep. XXVII; WCDS 20] do not include any part of the transit industry in their coverage, and this is because of the recognition of the special problems of the transit industry which are unique and peculiar to itself.

This aspect of the problem has been recognized by the National Board. Chairman Davis in his opinion in the Capital Transit case [15 War Lab. Rep. 115], makes a detailed analysis of what he calls the "unique features" of the problems of the local transit industry, explaining why no parallel to other branches of industry can be drawn on the basis that this is a service industry controlled by customer habits.

In many subsequent cases, the National Board has distinguished the transit industry from other industries in matters of wage stabilization.

The industry members object to the following parts of the directive order in this case:

1. NIGHTWORK PREMIUM

The order to pay a four-cent premium for all hours worked between 6:00 p.m. and 6:00 a.m. would establish a practice unknown to the transit industry. The decision is precedent making and will be seriously unstabilizing in the transit industry. The Davis memorandum of Apr. 24, in Par. "f," states the conditions under which shift differentials may be approved. The pertinent language is as follows:

"* * * shift differentials in accordance with stabilized limits * * * in cases where the Board finds in accordance with its past practice (1) that such limits have been established in the appropriate area or industry by a clear and well defined practice, the following of which in the particular case would not be unstabilizing to the area or industry * * *."

The majority apparently relies upon the contention that shift differentials have been established within the area although it is clear that shift differentials have not been established in the transit industry. What the majority apparently disregards is that the granting of shift differentials in this case would establish a new and unstabilizing precedent in the industry since almost no precedent of any kind exists for shift differentials in the transit industry.

This fact is recognized by the National Board, which has before it for consideration the order of this Board approving a two-cent shift differential for work performed between 6:00 p.m. and 6:00 a.m. in the Reading Street Railway Company case. In this case, the Regional Board, acting on a Form 10 application, approved the parties' request to pay the shift differential, subject to prereview by the National Board. The National Board is still considering the appropriateness of a shift differential in the transit industry, quite obviously because of the precedent-setting character of this issue in the Reading Street Railway Company case.

It should be recognized that there are substantial differences between the Reading case and this case:

First, in the Reading Case, the shift differential was negotiated in place of a bonus plan (in the present case, the Philadelphia Transportation Company is now paying a "workload bonus");

Second, the amount of shift differential in the Reading case is only half that proposed in this case; and

Third, the Reading case was a voluntary application negotiated between the parties.

Certainly the Reading Street Railway Company does not establish a precedent in the transit industry which would justify the ordering of a

four-cent differential in a dispute case, and it should be obvious that, if the majority decision of the Regional Board in this case is approved, a serious and unstabilizing precedent will have been established in the transit industry.

The only precedents cited for shift differentials in the transit industry in the entire country are those in effect for the Chicago Surface Lines, the Detroit Street Railways, and the transit employees of Hershey Estates. Each of these transit operations has certain unique characteristics which cause them to be distinct from the majority of transit operations so that even the slender precedent relied upon by the majority for a finding of any industry practice completely breaks down.

At the Hershey Estates, the employees engaged in the operation of the transit system are paid the same shift bonus as other employees of that unusual manufacturing enterprise. In other words, the transit operations are entirely subsidiary to the large and overshadowing manufacturing enterprise which dominates the community.

The Detroit Street Railways are municipally owned and are not subject to orders and regulations of the National War Labor Board. It hardly seems worth citing as a precedent operations which are outside the juridiction of national wage stabilization.

The Chicago Surface Lines have for many years prior to wage stabilization paid a shift differential of two cents per hour on the late evening and early morning runs, usually called "owl runs;" these start from 9:00 to 10:00 p.m. and operate until 4:00 and 5:00 a.m. It is clear that the shift differential in effect for these very late runs is quite different from the proposal of the majority in this case, which would apply to night hours starting as early as 6:00 p.m.

The fact that no real practice of paying night-shift bonuses exists in the transit industry — an industry which has had a long history of collective bargaining—is a strong indication of how inappropriate both employees and employers have felt such a method of compensation to be in this industry.

Because of their obligations as public utilities, transit companies operate 24 hours a day every day of the week. The extent of their operations and the frequency of their schedules are determined by the public's need for transportation. Transit companies enjoy no economies through night-work operations—in fact, night runs are generally most unproductive.

In the case of the Philadelphia Transportation Company, there are no shifts of work comparable to shifts in manufacturing industries. The times of starting and finishing work vary for each individual run, and employees freely select their working hours in the order of their seniority with the result that older men pick the work hours they consider most desirable. Experience shows that employee opinion differs as to the desirability of early or late working hours. Many older men with great seniority pick late night runs, preferring the light traffic periods of the day to the runs during daylight hours, when passenger traffic is heavy and street traffic of all kinds makes the operator's work more arduous. The introduction of a night premium in this industry will tend to completely upset the long established relationships between runs.

The shift premium here proposed will actually result in payment of a premium for less work. This is true because the hardest part of the operator's job is during the peak hours from 6:00 to 9:00 a.m. and from 3:00 to 6:00 p.m. Work on day runs, which start as early as 4:00 a.m., is extremely light until the morning traffic peak begins at 6:00 a.m.

Similarly, work in the early evening after 6:00 p.m. is also much lighter than during the 3:00 to 6:00 p.m. traffic peaks; yet this proposed shift bonus actually proposes to pay more during hours when there is less work. Work on the late night runs is the lightest of all. These runs have always been a necessary part of transit operations and are no wartime phenomenon. Payment of the same wage rate for the much lighter work load clearly overbalances the fact that the work is performed during night hours.

The transit industry, throughout its history, has recognized the extreme variations in work load which occur during the heavy traffic periods of the day as compared with the very light traffic periods of the day. It has also recognized the difference in desirability of runs during daylight hours and during late night hours.

These differences tend to offset each other with the result that the industry, in its many years of experience in collective bargaining, has maintained a single wage rate for day and night operations and for on-peak and off-peak operations and has consistently followed the practice of permitting employees to select runs most desirable from their personal points of view on the basis of seniority.

The industry members submit that the majority proposal of paying a shift bonus in this company is not justified by the special characteristics of the industry and would result in the introduction of a new and unstabilizing practice in the industry in clear violation of the Davis memorandum of Apr. 24, 1945.

2. PAYMENT FOR WORK CLOTHES

The order that the company furnish such uniforms as it may require cannot be based upon any substantial practice in the industry. While this Board has approved a few Form 10 applications for full cost of uniforms, it has never made such an order in a dispute case. The Big Four Meat Packing case [21 War Lab. Rep. 652], upon which the union relied, furnished no precedent as the National Board expressly limited its decision to the meat packing industry and ruled that the decision would not be precedent-making. In the meat packing industry, the work clothes are worn only in the plant and left there and cannot be worn outside because of blood and other soils to which subjected while at work. In the transit industry, the uniforms remain in the employees' possession and are worn when not at work. The company can exercise no control over such use.

The order really amounts to a general increase for uniformed employees and will be unstabilizing in the industry.

3. OVERTIME

The company guarantees a minimum of eight hours' pay for each day worked on the regular workday runs. As there is no top limit to the number of regular runs for a day, it seems reasonable to fix a time beyond which overtime begins, but some leeway must be given to permit scheduling so that the company will not be penalized by the eight-hour minimum or by the overtime premium. Runs cannot be scheduled to an even eight hours, and therefore the limit when the overtime starts cannot be eight hours as either the minimum day penalty or the overtime premium would be incurred to some extent in every day worked.

The record shows that more than half of the runs have round trip running time of from 70 to 142 minutes. Based on its study of this data, the panel recognized the scheduling difficulties of the company and recommended that daily overtime be paid after nine hours per day. The Board, however, has reduced the overtime limit to 8½ hours per day, which will make impossible the scheduling of runs between the 8-hour minimum guarantee and the 8½-hour overtime limit in every case. The industry members submit that the panel recommendation of daily overtime after nine hours per day is, by the circumstances of this case, a reasonable order.

As time and one-half must be paid under the order after 44 hours (or after 40 hours for maintenance employees), there seems to be no justification for the premium for work on the scheduled day off unless the employee has worked his regular schedule. While the order does require that the parties negotiate what absences shall be excusable for parties for determining whether his regular schedule has been worked so as to entitle the employee the premium for working on his day off, we think paying the premium unless all of the workweek has been worked is wrong in principle and that it will not be possible to prevent absences.

4. PROGRESSION

The order that the transportation employees shall progress to reach their top rate after six months instead of after a year will result in four automatic increases, one every month and a half instead of every three months. The practice in the industry generally is to reach the top rate after a year. No basis for the six-month period was shown. Both the National and the regional boards have fixed their stabilized top rates for transit operators as ones to apply after a year of service. This order is in conflict with the standards of the National Board as to automatic progressions as announced in Release B-1885.

5. RETROACTIVITY

The usual ordering of retroactivity to the expiration date of a previous contract cannot be justified in this

case. While the company has the right to reschedule work in order to avoid, in the future, the presently ordered new premiums and penalties, it cannot adjust work retroactively, and thus it will be obliged to pay a large amount because of the order as to retroactivity.

Memorandum Decisions of National War Labor Board

CHRYSLER CORP.

In re CHRYSLER CORPORATION [Detroit, Mich.] *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCALS 3, 889, 946, 51, and 7 (CIO). Case No. 111-9154-D, June 13, 1945 (made public Aug. 7, 1945).

Majority decision of Board vacating order of Regional Board XI (Detroit). Public members concurring: Lewis M. Gill, Dexter M. Keezer, Nathan P. Feinsinger, and Lloyd K. Garrison. Employer members concurring: Fred J. Climer, Earl Cannon, Clarence O. Skinner, and Vincent P. Ahearn. Labor members dissenting: Carl J. Shipley, John Brophy, Robert J. Watt, and James A. Brownlow.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted the petition for review filed by the company in the above entitled case and having reviewed the merits of the case, hereby orders:

I. The Eleventh Regional War Labor Board's directive order of Jan. 19, 1945, in so far as it relates to negotiation of objective criteria for merit increases, is set aside, and the grievance shall be submitted to arbitration. In the event the parties are unable to agree on selection of an arbitrator, appointment shall be made by the Eleventh Regional War Labor Board. *

* ED. NOTE: The Regional Board directed that merit increases for three salaried employees be referred back to the parties for establishment of "objective criteria and standards for making merit increases" on grounds that the present system was vague and should be based on a more specific plan.

In its petition for review, the company contended that the Regional Board exceeded its jurisdiction in dealing with the merit plan and stated that the issue involved only the question of merit increases for three employees. (Information supplied by WLB staff.)

CONSOLIDATED VULTEE AIRCRAFT CORP.—

In re CONSOLIDATED VULTEE AIRCRAFT CORPORATION [Louisville, Ky.] *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 603 (CIO). Case No. 111-16013-D, June 12, 1945 (made public Aug. 7, 1945).

Unanimous decision of Board ordering submission of disputes to arbitration. Public members concurring: Lewis M. Gill and Jesse Freidin. Labor members concurring: Carl J. Shipley and Elmer E. Walker. Employer members concurring: Clarence O. Skinner and Vincent P. Ahearn.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby orders the parties to submit the disputes to arbitration. In the case of Richard Cherry, the issue to be arbitrated shall be one of fact as to whether he quit or not. In the discharge cases, the issue to be arbitrated shall be whether the corporation's actions were unreasonable or arbitrary under the circumstances.†

† ED. NOTE: The union requested reinstatement of 13 discharged employees, full seniority and vacation for a rehired employee, and that another employee (Richard Cherry) be given the right to serve as shop steward and represent employees in the processing of grievances.

The company contended that the 13 employees had been discharged for just cause, that it could not restore full seniority and provide a vacation for the rehired employee, and that the shop steward quit his job and thereby surrendered his position as shop steward. (Information supplied by National Airframe Panel.)

H. O. BOHME, INC., ET AL.—

In re H. O. BOHME, INC. [New York, N. Y.] *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, MACHINE AND INSTRUMENT LOCAL 1227 (CIO). Case No. 111-7765-D, June 26, 1945; BROOKLYN UNION GAS COMPANY [Brooklyn, N. Y.] *and* TRANSPORT WORKERS UNION OF AMERICA, LOCAL 101 (CIO). Case No. 111-7183-D, June 27, 1945; EASTERN TEMPERATURE CONTROL COMPANY [Lynbrook, Long Island, N. Y.] *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 1217 (CIO). Case No. 111-7933-D, June 26, 1945; G. F. RICHTER MANUFACTURING COMPANY [Long Island City, N. Y.] *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 1227 (CIO). Case No. 111-3692-D, June 15, 1945; and SPARKMAN AND STEPHENS, INC. [New York, N. Y.] *and* ASSOCIATION OF MARINE DRAFTSMEN, NATIONAL COUNCIL OF MARINE DRAFTSMEN (Ind.) Case No. 111-7156-D, May 29, 1945.

Majority decisions of Board amending orders of Regional Board II (New York). Labor members dissenting.

[ED. NOTE: The issue reviewed by the Board on its merits in each of these cases is the issue of progression within rate ranges. The Board's decisions are almost identical to its precedent-setting decision in the case of the Rane Tool Co., Inc. at 24 War Lab. Rep. 482.]

INTERNATIONAL HARVESTER CO.—

In re INTERNATIONAL HARVESTER COMPANY [Bettendorf, Iowa] *and* UNITED FARM EQUIPMENT WORKERS OF AMERICA, LOCAL 149 (CIO). Case No. 111-7408-D, June 16, 1945 (made public Aug. 4, 1945).

Majority decision of Board remanding order of Regional Board VII (Kansas City). Public members concurring: Nathan P. Feinsinger and Edwin E. Witte. Employer members concurring: Earl N. Cannon and Horace B. Horton. Labor members dissenting: Carl J. Shipley and James A. Brownlow.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted the petition filed by the company for review of the Seventh Regional War Labor Board's directive order of Jan. 13, 1945, in the above entitled case, hereby takes the following action:

The case is remanded to the Seventh Regional War Labor Board for reconsideration of its order with respect to an increase in the occupational earning rate for combination job.*

PACIFIC NUT OIL CO.—

In re PACIFIC NUT OIL COMPANY (SUBSIDIARY OF CALIFORNIA COTTON OIL CORPORATION) [Los Angeles, Cal.] *and* WAREHOUSE AND DISTRIBUTION WORKERS UNION (INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION), LOCAL 26 (CIO). Case No. 111-8184-D, May 18, 1945 (made public Aug. 7, 1945).

Majority decision of Board remanding in part and amending in part order of Regional Board X (San Francisco). Public members concurring: Nathan P. Feinsinger and Lewis M. Gill. Labor members dissenting on Pars. I and II: Delmond Garst and Elmer E. Walker. Employer members dissenting on Par.

---

* ED. NOTE: Upon recommendation of an investigator, the Regional Board ordered an increase in the occupational earning rate from $1.0555 per hour to $1.255 per hour to compensate for the fact that the employee involved, who previously operated one machine, now operated three. In its petition for review, the company contended that it had no opportunity to comment on the investigator's findings and that the new rates were contrary to industry and area practice. It was also argued that the increase would cause inequalities by upsetting present rate structures, that no increased skill was required, and that the additional duties represented only an effort to utilize idle production time.

While processing the case the Board was informed that the Regional Board had intended to adopt the investigator's recommendation and that the investigator had recommended approval of the union's demand while under the impression that such demand was for a rate of $1.125 rather than $1.225 per hour. (Information supplied by WLB staff.)

III: William Maloney and S. Bayard Colgate.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted, insofar as it relates to the issues involving starting and quitting time and shift differentials, the petition filed by the company for review of the Tenth Regional War Labor Board's directive order of Nov. 1, 1944, as amended Dec. 21, 1944, and having reviewed the merits of the case with respect to these issues, hereby decides the dispute between the parties and orders:

I. Starting and Quitting Time. This issue is remanded to the Tenth Regional War Labor Board for reconsideration. *

II. Shift Differential. Par. IC of the said directive order of Nov. 1, 1944, is hereby modified to provide for payment of a differential of four cents for the second shift and six cents for the third shift. †

III. The remainder of the petition for review is hereby denied.

IV. Subject to the provisions of Pars. I and II above, the terms and conditions of employment set forth in said directive order of Nov. 1, 1944, as amended Dec. 21, 1944, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

UNIVERSAL ATLAS CEMENT CO.—

In re UNIVERSAL ATLAS CEMENT COMPANY [Hannibal, Mo.] *and* UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, LOCAL 205 (AFL). Case No. 111-6793-D, June 4, 1945 (made public Aug. 7, 1945).

Majority decision of Board amending order of Regional Board VII (Kansas City). Public members concurring: Lewis M. Gill and Dexter M. Keezer. Labor members dissenting on Par. I: Raymond McCall and Delmond Garst. Employer members dissenting on Par. II: Earl N. Cannon and Lee H. Hill.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted, in so far as it relates to arbitration, the petition for review filed by the company in the above entitled case and having reviewed the merits of the case with respect to this issue, hereby decides the dispute between the parties and orders:

I. The terms and conditions of employment set forth in the Seventh Regional War Labor Board's directive order of Jan. 11, 1945, in this case shall govern the relations between the parties with the following modifications:

A. Par. 5 of said directive order is modified by striking out the words "U. S. Conciliation Service" and substituting therefor the words "Seventh Regional War Labor Board."‡

---

* ED. NOTE: The Regional Board directed that "the present starting and quitting time of each employee shall continue under the terms of this agreement, and, for work performed prior to such starting times and after such regular quitting times, overtime shall be paid; provided, however, that, in the event there is a change in the present shift arrangements, the parties shall have the right to negotiate any change in starting and quitting time."

The company's petition for review stated that this provision was in violation of Executive Order 9240 [8 War Lab. Rep. XXVII; WCDS 20] because it required overtime payment with reference to particular hours rather than with regard to whether a regular schedule had been worked.

The order was remanded on grounds of violation of Executive Order 9240 and contravention of Board policy, which doesn't guarantee hours of employment. (Information supplied by WLB staff.)

† ED. NOTE: The Regional Board directed five cents for the second shift and 7.5 cents for the third shift. The company's petition stated that this order violated industry and area practice.

The National Board's order is in conformance with instructions on fringe adjustments issued by the Director of Economic Stabilization, 23 War Lab. Rep. No. 4, V, in which four and six cents were established as the limits on shift premiums in continuous-operation industries. (Information supplied by WLB staff.)

‡ ED. NOTE: Par. 5 provided that, if the parties were unable to agree upon the selection of an umpire in grievance matters, "request shall be made of the U. S. Conciliation Service for such appointment; expense incurred,

'II. That part of the petition for review which relates to the issue of check-off is hereby denied.

III. The terms and conditions of employment set forth in said directive order of Jan. 11, 1945, as herein modified shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed hereby, as ordered by the National War Labor Board.

GLENN L. MARTIN CO.—

In re GLENN L. MARTIN COMPANY [Baltimore, Md.] *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 738 (CIO). Case No. 111-7696-D, May 30 and July 24, 1945 (made public Aug. 4, 1945).

Interpreting 23 War Lab. Rep. 373.

Majority decisions of Board interpreting prior order.

Order of July 24—Public members concurring: Lewis M. Gill and Jesse Freidin. Labor members dissenting on Pars. 1 and 2: Carl J. Shipley and James Brownlow. Employer members dissenting on Par. 3: Earl N. Cannon and Charles Roberts.

Order of May 30, 1945—Public members concurring: Lewis M. Gill and Dexter Keezer. Employer members concurrng: Earl Cannon and Walter Knauss. Labor members dissenting on Par. 2: Carl J. Shipley and James A. Brownlow.

Order of Interpretation

July 24, 1945

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, naving considered the company's and union's requests for interpretation of the directive order dated Mar. 13, 1945 [23 War Lab. Rep. 373], and of the order of interpretation dated May 30, 1945, hereby makes the following ruling:

1. The Board's order of interpretation dated May 30, 1945, applies only to janitors and laborers.

2. The union's requested interpretation with regard to prorata vacations is denied. Employees who are terminated through no fault of their own are not eligible for prorated vacation pay during the current year unless they have already worked at least 1,000 hours during the current year.

3. In order to effectuate Par. 1(c) (2) of the Board's directive order dated Mar. 13, 1945, the company is directed to permit union representatives access to the plant under terms to be negotiated by the parties. If, within 15 days after receipt of this order of interpretation, the parties are unable to reach agreement upon such terms, the dispute shall be referred to the National War Labor Board for decision.

Order of Interpretation

May 30, 1945

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the union's request for interpretation of the Board's directive order dated Mar. 13, 1945, hereby makes the following ruling:

1. Par. 1(a) (4) of the Board's directive order dated Mar. 13, 1945, shall be effective as of Apr. 25, 1944.

2. The union's requested interpretation with regard to the effective date of Par. 2(d) (vacations) of the Board's directive order dated Mar. 13, 1945, is denied. The increased vacation award shall be applicable only to vacations earned in the year 1944 and granted or paid for in the year 1945.

---

if any, shall be borne equally by the employer and the union."

In its "Rules of Organization and Procedure," Sec. 802.29 (b), (21 War Lab. Rep. xiii; WCDS 84), the Board provides that "unless the parties otherwise agree, the appointment of an arbitrator shall not be delegated by the Board or its agent to an association, agency, or individual."

Action of National War Labor Board and Subsidiary Agencies on Wage Agreements

GENERAL ELECTRIC CO.—

Decision of National Board

In re GENERAL ELECTRIC COMPANY [Schenectady, N. Y.] *and* UNITED ELECTRICAL, RADIO, AND MACHINE WORKERS OF AMERICA (CIO). Case Nos. 13-505 and 13-506, Apr. 17, 1945.

Letter of Approval

By virtue of and pursuant to the powers vested in it by Executive Order No. 9017 of Jan. 12, 1943, the Act of Congress of Oct. 2, 1942, and the Executive Orders and regulations issued thereunder, the Board has taken the following action:

The proposed increases to individuals whose rates are already above the proposed job rates, in jobs rated at less than $1.00 (96 cents and below), are hereby denied. In all other respects, the Form 10 applications are approved, and the parties are authorized to put the approved adjustment into effect in accordance with the application.

Background Facts Supplied by WLB Staff: The agreement provides for the adjustment of job rates so that bottom rates remain the same, but differentials between other jobs will be in uniform amounts, such amounts to be 3 cents for jobs rated below 80 cents, 4 cents for jobs rated between 80 cents and $1.00, and 5 cents for jobs paying over $1.00. Existing rates are to be moved upward whenever necessary to provide such differentials. For example, jobs paying 84 cents or 88 cents will not be changed, but jobs paying 86 or 87 cents would be moved up to 88 cents. The parties stated that the new differentials constituted minimum necessary differentials between jobs. The agreement also provides for corresponding adjustments in rates of incumbents.

The agreement was approved on the ground that the increases involved, when averaged over the entire plant, are less than the one cent an hour permissible in reclassification cases (23 War Lab. Rep., No. 4, VI).

Increases to individuals whose rates are already above the proposed job rates in jobs rated at less than $1.00 were denied because there was no conclusive evidence that there existed for such jobs rate ranges within which such adjustments would be permissible. For rates above $1.00, however, rate ranges exist.

Personnel Appointments of the National War Labor Board and Subsidiary Agencies

DAILY NEWSPAPER PRINTING AND PUBLISHING COMMISSION

WLB Press Release B-2189, Issued Aug. 9, 1945

Frederick S. Deibler, vice-chairman of the Daily Newspaper Printing and Publishing Commission of the National War Labor Board since its establishment on Mar. 1, 1943, has been named chairman to succeed Robert K. Burns, who resigned to return to the University of Chicago.

Justice William Lee Knous, a member of the Colorado State Supreme Court and a public member of the Ninth Regional WLB at Denver, has been named public member of the Commission.

Mr. Deibler is professor emeritus of economics at Northwestern University, where he taught from 1904 to 1942. From May 1942 until his appointment as a member of the Commission, he served as a panel chairman of the Board on various disputes cases.

He is a graduate of Hanover College, Hanover, Ind., and received his master's degree at Harvard University and his Ph.D. at the University of Wisconsin. During the last war, he was assistant examiner of the Shipbuilding Labor Adjustment Board for the Great Lakes District. In 1935 he served as a member of a committee investigating the effect of the National Recovery Act on the boot and shoe industry.

J-M SERVICE CORP.—

Decision of National Board

In re J-M SERVICE CORPORATION, KANSAS ORDNANCE PLANT [Parsons, Kan.] *and* UNITED MINE WORKERS OF AMERICA, DISTRICT 50, LOCAL 12626 (Ind.). Case No. 111-6983-D, Aug. 5, 1945. Amending 17 War Lab. Rep. 809.

EMPLOYEE BENEFITS—Sick Leave

Employees engaged in loading shells are not entitled to paid sick leave where employer compensates employees at two-thirds pay for time lost due to industrial accidents prior to beginning of workmen's compensation payments. Regional Board's order granting six days' paid sick leave because of hazards of industry, accordingly, is vacated.

For other rulings see Index-Digest 49.800 in this or other volumes.

VACATIONS—Liberalization of plan

Employees of shell loading plant who now receive one week's vacation after six months' service are also entitled to second week's vacation after five years' service on basis of practice in area. Regional Board's order denying liberalization of vacation plan is amended accordingly.

For other rulings see Index-Digest 205.323 in this or other volumes.

Majority decision of Board amending decision of Regional Board VII (Kansas City). Public members concurring: Edwin E. Witte and Lewis Gill. Employers members dissenting on vacations: Earl N. Cannon and Lee M. Hill. Labor members dissenting on sick leave: Carl J. Shipley and Elmer E. Walker.

Directive Order No. 2

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted the petition filed by the parties in the above entitled case and having reviewed the merits of the case, hereby decides the dispute between the parties and orders:

I. The terms and conditions of employment set forth in the Seventh Regional War Labor Board's interim directive order of Aug. 5, 1944 [17 War Lab. Rep. 809], in this case shall govern the relations between the parties with the following modifications:

A. Sick Leave and Retroactivity Thereof

Paragraphs II and III of the said interim directive order which relate to these issues are hereby vacated, and the following is substituted therefor: *

The union's request for sick leave is hereby denied.

B. Vacation

Paragraph IV of the said interim directive order which relates to this issue is hereby amended to provide for two weeks' vacation after five years of service in addition to the present vacation plan. †

II. The terms and conditions of employment set forth in said interim directive order of Aug. 5, 1944, as herein modified, shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

---

* ED. NOTE: On Feb. 2, 1945, the Board remanded the issues of sick leave and vacation for further bargaining by the parties (23 War Lab. Rep. 24). The parties were unable to agree, and the case again came before the National Board.

Appealing from the Regional Board's award of sick leave, the company stated that the Regional Board had been unaware of the existence of a contract clause protecting employees against loss of earnings caused by industrial hazards. The clause provides that "employees will be compensated for time lost due to industrial accident at two-thirds of their normal rate of pay for a period of not to exceed six days of 48 hours' straight time." Six days is the waiting period before workmen's compensation payments begin. Because this contract clause offsets special hazards inherent in the work, the company contended, the Regional order is tantamount to a requirement that the company compensate for nonindustrial illness, and such requirement is contrary to established WLB policy in dispute cases. (Information supplied by WLB staff.)

† ED. NOTE: The union contended on appeal that the Regional Board had disregarded area practice justifying liberalization of the present plan. (Information supplied by WLB staff.)

AUBURN SPARK PLUG CO., INC.—

Decision of National Board

In re AUBURN SPARK PLUG COMPANY, INCORPORATED [Auburn, N. Y.] *and* INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 808 (AFL). Case No. 111-12372-D, June 16, 1945 (made public Aug. 4, 1945).

GRIEVANCES—Presentation of grievances — Individual employee—Presence of shop committeeman

Employee may present grievance either individually or in presence of shop committeeman, or, if employee so desires, grievance may be presented by shop committeeman, union to be notified of all grievances. Regional Board's order providing that grievances should be presented in presence of committeeman or by committeeman is amended accordingly.

For other rulings see Index-Digest 60.169 in this or other volumes.

Majority decision of Board amending directive order of Regional Board II (New York). Public members concurring: Nathan P. Feinsinger and Edward E. Witte. Labor members dissenting on acceptance of company petition in Par. I: James A. Brownlow and Carl J. Shipley. Employer members dissenting on Pars. I and II: Earl Cannon and Horace Horton.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the petition filed in the above entitled case for review of the interim directive order dated Mar. 14, 1945, of the Regional War Labor Board for the Second Region, hereby orders:

I. The said petition for review is hereby granted with respect to Par. I of the said interim directive order, and said paragraph is hereby modified to read as follows:

When a grievance occurs, the affected employees shall have the right to present such grievance to the foreman either individually or in the presence of a shop committeeman; provided, however, if the employee so chooses the grievance may be presented by the shop committeeman. The union shall be notified of all such grievances.

II. The said petition for review is in all other respects denied, and the said interim directive order is in such respects hereby affirmed and adopted as the order of the National War Labor Board.

III. Subject to the provisions of Par. I above, the terms and conditions of employment set forth in the said interim directive order of Mar. 14, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Interim Directive Order of Regional Board II (New York)

Mar. 14, 1945

The Regional War Labor Board for the Second Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides certain of the issues in dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. First Step in Grievance Procedure

When a grievance occurs, the affected employee shall have the right to present such grievance to the foreman in the presence of a shop committeeman; provided, however, if the employee so chooses the grievance may be presented by the shop committeeman.

2. Premium Pay and Holidays

(a) The company shall pay time and a half for work performed after eight hours in any one day.

(b) The request of the union for six paid holidays is hereby denied.

(c) The parties shall negotiate within 15 days of the date of issuance of this interim directive order for the purpose of determining what constitutes justifiable absences in counting as days worked, days on which such ab-

sences occur and for the purpose of computing overtime pay for work performed upon the sixth day worked in a regular workweek. In the event that they cannot agree with reference to this issue, they shall so report to this Board.

3. Renegotiation of Premium Pay

The request of the union for a contract provision permitting renegotiation of premium pay issues if and when Executive Order No. 9240 [8 War Lab. Rep. XXVII; WCDS 20] is rescinded or modified is hereby denied.

4. Seniority in Layoffs or Reemployment

The parties shall negotiate within 15 days of the date of the issuance of this interim directive order with regard to this issue. In the event that they cannot agree, they shall so report to this Board.

5. Vacation Pay

In accordance with the agreement of the parties, employees with one year of service with the company shall receive one week's vacation with pay for 40 hours; employees with five years of service with the company shall receive two weeks' vacation with pay for 80 hours, the pay to be based upon the average straight-time hourly earnings during the 13 weeks prior to July 1.

6. Management Clause

The following clause shall be included in the agreement of the parties:

"The company shall have the right to hire employees from whatever source obtainable and the right to suspend, dismiss, or otherwise discipline an employee for violation of any rules and regulations or for other proper cause, provided that such action shall be subject to the grievance procedure."

7. Pay to Committee during Grievance Negotiations

In accordance with the agreement of the parties, there shall be nine members on the grievance committee. The company shall pay committeemen for time spent by them in negotiating grievances in the first two steps of the grievance procedure up to a maximum of two hours per week per committeeman. Three members of such committee shall be paid by the company for time spent at the weekly grievance meeting without limitation as to the amount of time so spent.

8. Wages

(a) The following clause shall be included in the agreement of the parties:

"The Company agrees to obtain as promptly as possible a copy of the findings in the job evaluation study which has been made. The Company agrees to furnish a copy of such evaluation for union inspection as soon as a copy is received by the Company. The Company agrees to set a meeting for negotiations on the wage issues not later than one week after the Company receives the job evaluation. The parties agree that if negotiations do not reach agreement, the wage issues may be submitted to an adjourned meeting of the panel without the necessity of conciliation and recertification."

(b) In the event of the establishment of a new job classification, the management shall have the right to set a rate therefor. The propriety of such a rate shall be subject to the grievance procedure in the event that the union is dissatisfied with it. Any adjustment resulting from such use of the grievance procedure shall be made retroactive to the date when the rate was set.

9. Retroactivity

In accordance with the agreement of the parties, adjustments other than those contained in Provisions 5 and subsequent above resulting from the provisions of this interim directive order or orders of this Board issued in this proceeding shall be effective as of Oct. 19, 1944.

The procedure to be followed in making the retroactive adjustments to the employees who have either quit or been discharged shall be in accordance with the resolution of the National War Labor Board of Apr. 2, 1943 [26 War Lab. Rep. 3].

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and unless otherwise directed by the National War Labor Board shall become operative 15 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be

suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree. The remaining issues in dispute between the parties will be determined by the Board at a later date.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall become operative, and in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order immediately operative.

Signed by John W. McConnell, Thomas L. Norton, and Howard Lichtenstein, public members; Arthur Torrey, Joseph W. Zeller, and A. S. Ormsby, employer members, subject to dissent on Provisions 1 and 6; and Benjamin Riskin, James Edgar, and Fraser Holzlohner, labor members, subject to dissent on Provisions 2 (b), 3, 6, and 8(c).

Report and Recommendations of the Panel *

The hearing in the matter entitled above took place in Auburn, N. Y., on the day of Jan. 10, 1945. Members of the panel were present throughout the hearing. Representatives of both parties were present throughout the hearing and were given full opportunity to be heard. The union filed a brief, and the representatives of the company filed a prehearing statement and a brief. The findings and recommendations here reported were reached by the panel members after careful consideration of the evidence at the hearing and the written statements of the parties.

PRELIMINARY STATEMENT

The Auburn Spark Plug Company is a New York corporation. Its only plant and home office is in Auburn, N. Y. It has been in business since 1910. Its present production includes screw machine products, spark plugs and aircraft components. 85 per cent to 90 per cent of its present production goes into the war effort.

United Automobile Workers (AFL) Local 808, became the bargaining agent of the employees involved in this matter by certification of the National Labor Relations Board Aug. 28, 1944, as follows: "All production and maintenance employees * * * including all inspectors (other than the chief inspector and the head inspectors), factory or shop clerks, weigh clerks, receiving and shipping clerks, but excluding all supervisors, foremen, assistant foremen, salaried employees, watchmen, guards, nurses, assistants to the personnel manager, the experimental engineer, the chief inspector, all head inspectors, and all supervisory employees," etc.

There are presently 215 to 225 employees in this bargaining unit.

Negotiations for a first contract began in September 1944. Since the third negotiation meeting on Oct. 4, 1944, the company has been represented by Labor Relations Institute, 1776 Broadway, New York 19, N. Y., and was so represented at the panel hearing. No signed agreement has been reached, but certain contract provisions have been agreed upon. (Union Exh. 1). Negotiations having failed to reach agreement on the issues in this matter, the dispute was certified to the National War Labor Board, Nov. 22, 1944. The conciliation commissioner was Edward C. McDonald.

The parties to this dispute are to be commended for the spirit of reasonableness and fair-mindedness that was evident in the panel hearing and which resulted in the withdrawal of certain issues as herein reported.

THE ISSUES

1. The union demands that the first step in the grievance procedure require the grievance to be presented through the union committeemen;

2. The union demands premium pay for hours over eight in the day, for the sixth consecutive day in the regularly scheduled workweek, and pay for six holidays if not worked;

3. The union demands the privilege of renegotiating the premium pay provisions in the event of rescission or modification of Executive Order 9240;

4. The union demands that layoffs and reemployments be on a straight seniority basis;

5. The union made certain demands relating to vacation pay;

6. The union demands that military leave of absence be granted with accumulation of seniority rights during the period of military service;

* ED. NOTE: Only that portion of the panel report relating to the first step in the grievance procedure is reproduced.

7. The company demands a "management clause;"

8. The union demands pay for committee members negotiating grievances without limitation upon the amount of time involved; and

9. The union demands with respect to wages—

(a) Job reclassification and evaluation,

(b) 10 cents per hour per employee to be negotiated to eliminate intra-plant inequities,

(c) Minimum hiring rate of 60 cents per hour,

(d) Incentive bonus to be computed daily instead of weekly,

(e) Equal pay for female employees, and

(f) Wages to be subject to renegotiation during the contract term if wage stabilization policy is altered.

1. First Step in the Grievance Procedure

The union demands a provision for the first step in the grievance procedure as follows: "Any employee having a grievance shall first take it up with a committeeman who will present it to the department foreman." The company requests a provision: "The grievance shall be presented by the employee, in person or with his union shop committeeman to the department foreman."

The company relies upon the language of National Labor Relations Act, Sec. 9(a).

The union claims that, if an employee is privileged to present a grievance direct to a company representative, the company, by discriminating in favor of the employee who deals directly, can undermine the prestige and influence of the union. The union relied upon Henry & Allen, Inc., and UAW, Local No. 825 (AFL), Case 111-7506-D, decided by NWLB, Second Region, Oct. 7, 1944. A majority of the panel were convinced by the company position on this issue and recommended: "Any employee who has a grievance may first take it up with a union committeeman who will attempt to adjust it," etc. The labor member of the panel dissented and recommended "shall" in lieu of "may." The directive order, without dissent upon this point, followed the labor member's recommendation and the order reads "shall."

Recommendation

At the panel conference, the panel members felt that the issue had been determined in favor of the union by the case of Henry & Allen Company, supra, and the panel voted unanimously to recommend the union position.

Upon reconsideration, the public and industry panel members withdraw and dissent from that recommendation. They recommend addition of the following provision: "Nothing in this directive order shall be construed to infringe upon the rights of individual employees to present grievances as guaranteed by Par. 9(a) of the National Labor Relations Act."

The public and industry panel members rely upon: Farrel-Check Steel Company, Case 111-3413-D, July 12, 1944, 17 War Lab. Rep. 683; and Koppers Company, Case 111-5532-D, Oct. 11, 1944 [20 War Lab. Rep. 198].

[ED. NOTE: Issues 2 through 9, discussed in the panel report at this point, are omitted.]

Signed by Ralph E. Kharas, representing the public; Bernard Murphy, representing labor, subject to dissent on Issues 1, 2, 4, 7, and 9; and Ralph Ebbert, representing employers, subject to dissent with opinion on Issue 3.

CARTER INK CO.—

Decision of National Board

In re CARTER INK COMPANY [Cambridge, Mass.] *and* INTERNATIONAL PRINTING PRESSMEN'S AND ASSISTANTS' UNION OF NORTH AMERICA, CAMBRIDGE INK AND CARBON WORKERS UNION, LOCAL 482 (AFL). Case No. 111-9088-D, Apr. 26, 1945 (made public Aug. 4, 1945).

HOURS OF WORK—Meal period—Industry area practice—Overtime work

Employees working overtime are not entitled to paid meal period where panel finds that (1) existing meal allowance of 60 cents is liberal when compared to industry and area practice and (2) demand for paid meal period does not conform to industry and area practice. Regional Board's order granting half hour's paid meal period when employees were required to work 1.5 hour's overtime without prior notice is vacated.

For other rulings see Index-Digest 65.300 in this or other volumes.

Majority decision of Board amending directive order of Regional Board I (Boston). Public members concurring: Dexter M. Keezer and Lewis M. Gill. Employer members concurring: Earl Cannon and Lee H. Hill. Labor members dissenting: Elmer E. Walker and Neil Brant.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having granted the petition for review filed in the above entitled case and having reviewed the merits of the case, hereby decides the dispute between the parties and orders:

I. The terms and conditions of employment set forth in the First Regional War Labor Board's directive order of Dec. 9, 1944, in this case shall govern the relations between the parties, with the following modification:

A. Paid Lunch Period

Par. II-B of the said directive order is hereby vacated.

II. The terms and conditions of employment set forth in said directive order of Dec. 9, 1944, as herein modified shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Directive Order of Regional Board I (Boston)

Dec. 9, 1944

The Regional War Labor Board for the First Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

I. Those terms and conditions mutually agreed to by the parties during negotiations unless necessary Board approval has not been obtained.

II. Those terms and conditions of employment set forth in the recommendations of the panel report dated Oct. 21, 1944, except as hereinafter modified:

A. Check-Off

The company shall deduct monthly from earned wages and remit to the local union, for the duration of the agreement, dues in the amount of $.... per month of those employees to whom this agreement applies who are members of the union and who individually authorize such a deduction in writing.

B. Paid Lunch Period

When overtime amounting to one and one-half hours or more is being worked, one-half hour shall be granted for lunch time immediately after the regular schedule, such half hour shall be paid for as overtime.

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect fifteen (15) days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Signed by Saul Wallen and James J. Healy, public members; Charles R. Kummer and Joseph B. Burns, employer members, subject to dissent on Par. II-B; and Michael J. Walsh

and Jeremiah A. Linehan, labor members, subject to dissent on denial of paid holidays.

*Report and Recommendations of the Panel**

Oct. 21, 1944

PARTIES TO THE DISPUTE

The Carter's Ink Company is a corporation with its office and plant at Cambridge, Mass., and has been engaged in the business of manufacturing ink, paste, etc., for many years.

The company employs aproximately 475 people of whom approximately 270 are eligible for membership in the bargaining unit.

These employees are represented by Cambridge Ink and Carbon Workers' Union, Local 482, affiliated with International Printing Pressmen's and Assistants' Union of North America, (AFL).

BACKGROUND

The parties first entered into a collective bargaining agreement in May 1942, as amended in May of 1943. Prior to the normal termination of the contract which would have been in May 1944, the parties conferred and reached an agreement on a contract renewal, except as to the issues herein certified to the War Labor Board on July 1, 1944.

ISSUES

1. Vacations,
2. Paid lunch period,
3. Check-off, and
4. Payment for nonworked holidays.

[ED. NOTE: Issue 1, discussed in the panel report at this point, is omitted.]

2. Paid Lunch Period

Background

The union desires the following clause as part of the contract between the parties:

When overtime amounting to one and one-half hours or more is being worked, one-half hour shall be granted for lunch time immediately after the regular schedule; such half hour shall be paid for as overtime.

The present practice of the company is to pay the employee 60 cents if he is not notified that he is required to work overtime until the day he is asked to work.

Union's Position

The union contends that the practice in Boston is that all subordinate unions to the International Printing Pressmen's and Assistants' Union have such a clause in their agreements with all employers and cites Lever Brothers Company of Cambridge as one firm in the area which pays for lunch periods by agreement with a labor union.

The employees required to work overtime must secure supper at additional expense to them and begin overtime after one-half hour is taken on their own time and expense.

Company's Position

The company contends that employees may have lunch periods if desired, and the company should not be penalized or obliged to pay for time not worked.

Discussion and Findings

The majority of the panel finds that the company's voluntary provision for supper money for employees who are not notified previous to the day they are required to work overtime is liberal as compared to general area practice, and when employees are notified in advance or previous to the day they are called upon to work, ample time is afforded the employee to make such arrangements as he sees fit to prepare for his overtime work.

The panel majority cannot find that the union's request is area or industry practice, and it would be unreasonable to require the company to meet the union request under the circumstances. The practice may also place the company at an economic disadvantage.

Recommendation

The union request for a paid lunch period shall be denied.

[ED. NOTE: Issues 3 and 4, discussed in the panel report at this point, are omitted.]

Signed by Louis C. Bobrick, representing the public, H. Clifford Bean, representing employers, and Thomas W. Bowe, representing labor, subject to dissent on Issues 2 and 4 with opinion.

*ED. NOTE: Only that portion of the panel report relating to paid lunch period is reproduced.

Dissenting Opinion of Labor Representative

Oct. 21, 1944

[ED. NOTE: Issue 1, paid holidays, discussed in the opinion at this point, is omitted.]

2. PAID LUNCH PERIOD

The panel majority is undoubtedly influenced by the controlling provision for supper money in the sum of 60 cents for employees who are required to work overtime when no notice prior to the date they are required to work is given them.

However, the dissenting member feels that in view of the fact that this allowance is paid only when no prior notice is given the employees and further in view of the fact that in numerous cases before the Board "spell out" time at company's expense has been allowed, it seems that the union's position should be upheld by paying the employees who are obliged to work overtime for the half-hour allowed for their lunch. The labor member is of the opinion that, regardless of area or industry practice, the union's request for a paid lunch period is justly due because of the extra burden of overtime on night work and the sacrifices made by the employees who are obliged to work overtime and particularly in regard to their family or personal life.

Signed by Thomas W. Bowe, representing labor.

SHEET GLASS COS.—

Decision of National Board

In re PITTSBURGH PLATE GLASS COMPANY and LIBBEY-OWENS-FORD GLASS COMPANY *and* FEDERATION OF GLASS, CERAMIC AND SILICA SAND WORKERS OF AMERICA (CIO). Case No. 111-7360-D, May 10, 1945 (made public Aug. 4, 1945).

Supplementing 22 War Lab. Rep. 340.

PREMIUM WAGE RATES—Shift premiums — Application to incentive workers

Board's prior order directing company to establish second-shift and third-shift premiums of four and six cents, respectively, is interpreted as not requiring company to add such premiums to base pay for incentive workers for purpose of computing incentive pay since purpose of order was to establish uniform amounts of shift premiums for all employees.

For other rulings see Index-Digest 140.589 in this or other volumes.

WAGE ADJUSTMENTS — Retroactive date

Board's prior order approving parties' agreement on retroactive date is amended on employer's request to require that adjustments be made retroactive to agreed upon date.

For other rulings see Index-Digest 225.346 in this or other volumes.

Majority decision of Board supplementing prior order. Public members concurring: Lloyd K. Garrison, Dexter M. Keezer, and Nathan P. Feinsinger. Employer members concurring: Vincent P. Ahearn, Clarence O. Skinner, and Lee H. Hill. Labor members dissenting on Par. I: Carl J. Shipley, Van A. Bittner, and James A. Brownlow.

Directive Order No. 3

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby orders:

I. Night-Shift Differential.* Par. 8 of the National War Labor Board's directive order Dated Feb. 24, 1945 [22 War Lab. Rep. 340] is hereby amended to provide that the night-shift differentials of four cents and six cents per hour shall not be included in the base pay for use in computing incentive pay.

---

* ED. NOTE: The company requested the Board to issue an order specifying whether or not the directed four- and six-cent night-shift premiums should be included in base pay for the purpose of computing incentive pay. It opposed such inclusion, but the union claimed that all increases and bonuses in the past had been added to base pay. The Board held that the company's position was consistent with the purpose of the order, which was to provide the same amount of nightwork premium to all employees regardless of variation in their hourly earnings. (Information supplied by WLB staff.)

II. Retroactivity.* Par. 10 of the said directive order is amended to provide that the effective date of the wage adjustments ordered therein shall be Feb. 1, 1944, the date agreed upon by the parties.

III. The foregoing terms and conditions of employment shall govern the relations between the parties, and the terms and conditions of employment set forth in said directive order of Feb. 24, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

CONSOLIDATED VULTEE AIRCRAFT CORP.—

Decision of National Board

In re CONSOLIDATED VULTEE AIRCRAFT CORPORATION [Miami, Fla.] *and* HOTEL AND RESTAURANT EMPLOYEES INTERNATIONAL ALLIANCE AND BARTENDERS INTERNATIONAL LEAGUE OF AMERICA, LOCAL 133 (AFL). Case No. 111-13253-D, July 24, 1945 (made public Aug. 4, 1945).

WAGES—GOING WAGE RATES—Rates paid by comparable plants in area

Employees of aircraft company's cafeteria are not entitled to wage increase where existing rates were approved by Board approximately one year ago and are those presently in effect in other comparable companies.

For other rulings see Index-Digest 250.205 in this or other volumes.

EMPLOYEE BENEFITS—Free meals for cafeteria employees

Employer is not obligated to restore practice of giving free meals to cafeteria employees on request of union where there was no showing that abolition of free meals coincident with introduction of new wage schedule resulted in wage cut, and no supporting practice exists in the area or industry.

JURISDICTION OF BOARD—Closed plant—Union shop denied

Board refuses to act on union's request for union-shop clause since plant involved has been closed. Decision is without prejudice to union's right to reopen issue in event plant resumes operations.

For other rulings see Index-Digest 82.891 and 195.601 in this or other volumes.

Majority decision of Board amending recommendations of National Airframe Panel. Public members concurring: Lewis M. Gill and Jesse Freidin. Employer members concurring: Earl Cannon and Charles Roberts. Labor members dissenting: James Brownlow and Carl J. Shipley.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby decides the dispute between the parties and orders that the following terms and conditions shall govern the relations between the parties:

1. The union's requested wage rates are denied.

2. The union's request with regard to the furnishing of free meals is denied.

3. The Board declines to act upon the issue of union security; however, the union shall have the right to reopen the issue in the event the plant resumes operation.

Report and Recommendations of the National Airframe Panel

June 26, 1945

BACKGROUND

This case involves the Miami Springs, Fla., plant of the Consolidated Vultee Aircraft Corporation and Local 133 of the Hotel and Restaurant

* ED. NOTE: The company was willing to make directed adjustments retroactive to the date which it had previously agreed upon but requested a Board order requiring it to do so because the original agreement had referred to increases reached in negotiations and had not referred to adjustments which might be ordered by the War Labor Board. (Information furnished by WLB staff.)

Employees' and Bartenders' Union, representing approximately 35 cafeteria workers. On Oct. 14, 1944, the union was certified by the National Labor Relations Board as the exclusive bargaining agent for all the employees in the cafeteria exclusive of manager, chef, clerks, cashiers, and all supervisory employees.

The parties entered into a stipulation of agreement on Nov. 29, 1944, on all issues except the union shop and wages. These two issues were certified to the National War Labor Board on Jan. 6, 1945, by the Secretary of Labor. A hearing was scheduled before the National Airframe Panel for Mar. 27, 1945. The union was not prepared to proceed with the hearing on that date, and it was agreed that the parties should submit the case to the panel on briefs.

The parties have agreed that the wage schedule which the Board approves shall be retroactive to Oct. 6, 1944, the date of the National Labor Relations Board election.

WAGES

Position of the Parties

The union has proposed that an hourly rate of $.90 be paid to all cafeteria attendants covered by the agreement. It is requested that all miscellaneous kitchen employees and porters be termed cafeteria attendants. The following progression scheduled is proposed for new cafeteria attendants who are hired after the agreement is signed:

Length of Service	Rate per Hour
Hiring Rate	$.65
After Two Weeks' Employment	.75
After Four Weeks' Employment (Employee is Classified as Cafeteria Attendant)	.90

The union has proposed that cooks and assistant cooks be paid an hourly rate of $1.00 per hour and that cooks and assistant cooks who are hired after the agreement is signed be termed beginners and paid an hourly rate of $.90. No provision for the progression of cooks from the beginner's rate to the job rate was proposed.

It was the position of the union that single rates for the cafeteria jobs should be instituted in order to eliminate alleged intra-plant inequites. The unon claimed that, under the existing rate ranges, very few employees are receiving the maxima rates and that employees doing the same work receive different rates of pay.

The union also contended that when the present SCAI rates were instituted the company ceased to provide free meals with the result that wages for cafeteria workers actually decreased. The union now asks that the company be required to furnish free meals.

The company is opposed to the union's request for the establishment of single rates and denies that the rates now in effect are less than the rates paid to the same employees prior to the time the company adopted the SCAI cafeteria rates.

It is the company's position that the rates now in effect were approved by the National Airframe Panel and the War Labor Board and that there has been no change in conditions since such approval that would justify an increase in the rates. The company points out that the rates now in effect are similar to the SCAI rates which have been approved in other divisions of the company.

Discussion and Recommendation

At the present time cafeteria workers receive the following rates which are those provided in the SCAI wage schedules and which were approved by the Board on Aug. 23, 1944, in Case No. 111-5442-D:

Classification	Rate
Commissary Attendant A	$1.05-$1.25
Commissary Attendant B	.85- 1.00
Commissary Attendant C	.75- .80
Cook A	.90- 1.05
Cook B	.80- .90
Janitor	.75- .80

Under the present plan inexperienced workers are hired at $.60 per hour and progress automatically by $.05 increases every four weeks until a rate of $.75 is reached. At the end of 16 weeks employees are classified. Janitors are hired at $.75 per hour. Experienced workers, immediately upon being hired, are classified into the job appropriate to their training. The rate of any employee hired within the $.60 to $.75 range progresses automatically by $.05 increases every four weeks to the minimum rate of $.75. The four-week intervals are proportionately increased for part-time beginners. For the purpose of converting part-time employment to full-time employment, any fraction of a week is credited as one week's full-time employment.

A majority of the panel, labor members dissenting, recommends that the union's requested wage rates be denied and that the existing rates which were approved by the Board in August 1944 be continued. The present rates are the approved SCAI rates and are those presently in effect in other companies which have adopted the SCAI rate schedules. The panel majority does not believe that rates higher than the SCAI rates are justified. This appears to be particularly true in the light of information with respect to area rates.

Bracket minima have been set by the Fourth Regional War Labor Board for only two jobs comparable to the jobs involved in this case. A comparison of the present rate ranges with the union's proposed rates and the approvable rates for these two jobs is as follows:

Present Job Title	Present Rate Range	Proposed Rate	Approvable Rate
Commissary Attendant C...	$.75-$.80	$.90	$.40
Janitor	.75- .80	.90	.40

The present rates are considerably above the cafeteria rates paid by Bell Aircraft Corporation in Marietta, Ga., which is the nearest airframe plant.

The allegation of the union that the institution of the SCAI schedule actually resulted in a reduction in wages because the company ceased to provide free meals is not supported by any evidence in the record. There is no evidence as to the area or industry practice with respect to providing meals to cafeteria workers. The panel majority, labor members dissenting, recommends on the basis of the record that the union's request that the company be required to provide free meals be denied. This recommendation is, however, without prejudice to the union's right to submit in its comments any evidence to show that the employees had actually suffered a reduction in wages at the time of the institution of the SCAI schedules as a result of the company's ceasing to provide free meals.

UNION SECURITY

Position of the Parties

The union asks that the Board direct a union-shop provision. It is stated that the peculiar facts and circumstances that prevail in the bargaining unit represented by the union justify the union shop. All employees voting at the National Labor Relations Board election voted unanimously for the union and therefore, the union contends, a maintenance-of-membership provision would "constitute an idle gesture." If the union had been free to exercise its economic strength, it could have insisted that it be granted the union shop.

The company has rejected the union's proposal and states that the fact that 20 out of 26 employees voted in favor of the union in the National Labor Relations Board election does not necessarily mean that all 20 are in favor of the union shop. Six employees who were eligible to vote did not vote. The company agrees with the union that the granting of maintenance of membership would "constitute an idle gesture," particularly since the union has not asked for maintenance of membership.

Discussion and Recommendation

The Board's policy of refusing to award the union shop in the absence of a previous collective bargaining agreement containing such a provision is well established. A majority of the panel, labor members dissenting, recommends that the union's request for the union shop be denied.

A majority of the panel, industry members dissenting, recommends, in accordance with the Board's policy, the standard maintenance-of-membership provision. No showing was made, nor was the contention raised, that the union has failed to meet its responsibilities or has in any respect failed to qualify for the maintenance of membership under the criteria which the Board has set forth.

The following provisions are recommended:

"(a) All employees who, on (15 days after date of directive order), are members of the Union in good standing in accordance with its constitution and by-laws, and all employees who become members after that date, shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated, or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the National War Labor Board with a no-

tarized list of its members in good standing as of that date.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"(b) If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above, or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by the National War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"(c) If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date, or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties or, if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, the arbitrator will be selected by the National War Labor Board, on due application. The decision of the arbitrator shall be final and binding upon the parties."

Any party desiring to post or otherwise publish an official explanation by the National War Labor Board of the foregoing maintenance-of-membership provision may use the [standard] form of notice [and] procedure to be followed in administering the maintenance-of-membership provision in the absence of some other procedure agreed to by the parties [12 War Lab. Rep. XXVIII; WCDS 321].

Signed by Benjamin Aaron and Philip S. Brayton, representing the public; R. Randall Irwin and Paul S. Chalfant, representing employers, subject to dissent on union security; and Garry Cotton and Andrew Leiper, representing labor, subject to dissent on denial of union-shop and wage rates.

OHIO BRASS CO.

Decision of National Board

In re OHIO BRASS COMPANY [Mansfield and Barberton, Ohio] *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCALS 758 and 747 (CIO). Case No. 111-7789-D, June 20, 1945 (made public Aug. 10, 1945).

GRIEVANCES—Right of individual employee to present grievances—Pay for union representatives while handling grievances

Individual employees are entitled to present grievances to company, provided company notifies union of grievances filed and negotiates with union concerning disposition of all grievances except those involving exclusively some question of fact or conduct peculiar to employee lodging grievance. Regional Board's order excluding individual employee from participation in grievance adjustment except in first step is amended accordingly where company claimed Regional Board's order is in violation of grievance proviso (Sec. 9(a)) of Wagner Act.

Regional Board's order directing company to compensate union representatives for earnings lost while handling grievances is remanded for reconsideration where company contended decision was in violation of National Board policy against ordering such compensation in dispute cases in absence of prior company practice.

For other rulings see Index-Digest 60.169 and 60.600 in this or other volumes.

Majority decision of Board amending decision of Regional Board V (Cleveland). Public members concurring: Edwin E. Witte, Lewis M. Gill, Jesse Freidin, and Nathan P. Feinsinger. Labor members dissenting on acceptance of company petition and on Pars. I(b) and II: Delmond Garst, Carl J. Shipley, Elmer E. Walker, and James A. Brownlow. Employer members dissenting on Pars. III and IV: William Maloney, Earl Cannon, Vincent P. Ahearn, and S. Bayard Colgate.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942,

and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted in part the petition for review filed by the company in the above entitled case and having reviewed the merits of the case with respect to grievance procedure and compensation for earnings lost by union representatives during handling of grievances, hereby orders:

I. Grievance Procedure

(a) Step 1 of the procedure set forth in Part I, Sec. 1, of the Fifth Regional War Labor Board's directive order of Dec. 6, 1944, is affirmed with the understanding that the individual himself may present his grievance with or without the steward, as he sees fit.

(b) The following provision shall be substituted for Steps 2, 3, 4, and 5 of the procedure ordered by the Regional Board:

Individual employees or groups of employees may personally present grievances to the company, but the union will be notified of all such grievances, and the company will negotiate with the union concerning the disposition of such grievances, except those involving exclusively some question of fact or conduct peculiar to the employee or employees lodging the grievance and not involving an interpretation of the collective agreement or a matter properly the subject of a collective agreement and except those grievances which the union agrees may be adjusted without notification to it or without its participation.

The issue concerning compensation to union representatives for earnings that may be lost during the period of handling grievances is remanded to the Fifth Regional War Labor Board for reconsideration.

The remainder of the petition for review is denied.

The request for an oral hearing is denied.

Subject to the provisions of Par. I above, the terms and conditions of employment set forth in the Fifth Regional War Labor Board's directive orders of Dec. 6, 1944, and Jan. 25, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Directive Order of Regional Board V (Cleveland)

Dec. 6, 1944

I. The Regional War Labor Board for the Fifth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Maintenance of Membership and Check-Off

"(a) All employees who, on Dec. 21, 1944, are members of the Union in good standing in accordance with its constitution and by-laws and all employees who became members after that date, shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated or until further order of the Board.

"The Company, for said employees, shall deduct from the first pay of each month the union dues for the preceding month and promptly remit the same to the union officer designated by the Union. The initiation fee of the Union shall be deducted by the Company and remitted to the union officer designated by the Union in the same manner as dues collection.

"The Union shall, immediately after the aforesaid date, furnish the Company and the Regional War Labor Board with a notarized list of its members in good standing as of that date.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"(b) If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by the Regional War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties or, if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, the arbitrator will be selected by the Regional War Labor Board on due application. The decision of the arbitrator shall be final and binding upon the parties."

Any party desiring to post or otherwise publish an official explanation by the National War Labor Board of the foregoing maintenance-of-membership provision may use the standard form of notice [and] procedure to be followed in administering the maintenance-of-membership provision, in the absence of some other procedure agreed to by the parties [12 War Lab. Rep. XXVIII; WCDS 321].

2. Grievances—Art. VII

Sec. 1

The parties shall substitute the following clause for Art. VII—Grievances, of the existing contract:

"The union, as the sole bargaining agent, shall be consulted on the disposition of any grievances involving any subject covered by this contract before the company takes any action on such grievance. All grievances and replies thereto must be in writing. Employees shall have the right to present grievances to management at any time, subject to the following procedure:

"Step 1. The aggrieved employee and/or his department steward may present a grievance to the foreman.

"Step 2. If the grievance is not satisfactorily adjusted within two working days, it may be taken up with the personnel department, by the steward, and/or the shop committee, consisting of not more than five employees.

"Step 3. If a satisfactory adjustment is not made within two working days, the grievance may be taken up with the executive vice-president of the company or such person as may be designated by him with authority to act for him, by the officers of the union or any representative authorized to act for it.

"Step 4. If the matter is not satisfactorily adjusted within five working days, the parties agree to call in a conciliator of the Conciliation Service of the U. S. Department of Labor for further consultation on the grievance, and an effort shall be made to adjust it.

"Step 5. Any grievance under this contract may go to arbitration, if the parties have been unable to reach a settlement in accordance with the grievance procedure outlined above.

"The arbitrator shall be selected by the union and the company within one week after the need for the arbitrator's services arises. In case the union and the company cannot agree upon an arbitrator, then the president of the Ohio State University shall appoint him. The decision of the arbitrator shall be binding upon all parties to the dispute. The expense of arbitration shall be borne equally by the union and the company."

Sec. 2

"Grievances requiring immediate action may be presented by such members of the shop committee as are designated by the union."

Sec. 3

"A department steward or a member of the shop committee desiring to leave his work for the purpose of conferring with a designated union official or member in the same plant with respect to a grievance requiring immediate attention shall secure a permit from his foreman so to do. Such application or permit shall designate the part of the factory to which the person entitled to the permit wishes to go."

Sec. 4

"Whenever an increase in wages is promised to an employee by a foreman or other company official, simultaneous notice thereof shall be given to the shop committee."

Sec. 5

"The discharge of any employee shall be subject to the grievance procedure, with arbitration as the final step, in accordance with the terms of the contract."

Sec. 6

"Shop stewards and members of the shop committee shall be compensated by the company for the earnings lost during working hours in the handling of grievances. In the event of an alleged abuse of this provision on the part of the union's representatives, the

question may be referred to the grievance procedure, with arbitration as the final step."

Sec. 7

"In computing time limits under this article, unscheduled work days and holidays shall not be counted."

3. Night Shift

The company shall establish a night-shift bonus of five cents per hour for the second shift and ten cents per hour for the third shift.

4. Vacations

The company shall grant to all employees involved in these proceedings one week's vacation with pay after one year but less than five years of service and two weeks' vacation with pay after five years of service. A week's vacation pay shall be computed at not less than 40 hours of straight-time average hourly earnings for the twenty-week period preceding May 23, 1944, or the average weekly hours regularly worked during that period, whichever is the greater.

5. Downtime

The union's request that downtime be compensated at 25 per cent of the day rate instead of the present method of computing it at 25 per cent over the base rate is hereby denied.

6. Time Studies

The union's requests that a copy of the raw-time study be furnished to the steward as soon as completed by the time-study man and that no changes in rates or earnings resulting from a time study shall be made without prior bargaining with the union are hereby denied.

The Board hereby directs that the union steward may be present when a job or operation is restudied due to the filing of a grievance over a rate.

7. Rest Periods

The union's request for a 10-minute rest period in the morning and in the afternoon is hereby denied.

8. Recognition—Art. I

The present contract clause, Art. I—Recognition, shall be revised by joining Pars. 2 and 3 with the word "and" and adding to the paragraph recognizing Local No. 758, the following words agreed upon by the parties: "And hourly paid clerks in the manufacturing departments."

The company's request to insert the word "bargaining" before the words "representative at its Mansfield plant" is hereby denied.

9. Rights of Employees—Art. II

There shall be no change in the present contract clause, Art. II—Rights of Employees.

10. Cooperation—Art. III

There shall be no change in the present contract clause, Art. III—Cooperation.

11. Seniority—Art. IV

There shall be no change in the present contract clause, Art. IV—Seniority.

12. Strikes and Lock-Outs—Art. V

There shall be no change in the present contract clause, Art. V—Strikes and Lockouts, except for the following deletions agreed upon by the parties:

"and so long as the Company complies with the conditions thereof,

"and so long as the Union complies with the conditions thereof."

13. Company Prerogatives—Art. VI

There shall be no change in the present clause of the contract, Art. VI—Company Prerogatives.

14. Military Service—Art. VIII

The following clause shall be substituted for Art. VIII—Military Service, of the present contract:

"The Company agrees that it will reemploy any employee who enters the Armed Forces of the Nation pursuant to the Selective Service Act, subject to the conditions stated in the Selective Service Act. The Company further agrees that it will accord similar treatment to all employees voluntarily enlisting in the Armed Forces of the Nation.

"The Company agrees that it will pay all the men who have been in continuous employment for six months, two weeks' wages when they leave the Company's employment to become members of the Armed Forces of the United States.

"The Company agrees that it will pay all men who have been in continuous employment for one year, four weeks' wages when they leave the Company's employment to become a member of the Armed Forces of the United States.

"The seniority of employees leaving for service with any branch of the Armed Forces of the United States or the Merchant Marine shall ac-

cumulate while they are in the service."

15. Hours and Overtime—Art. XI

There shall be no change in the present contract clause, Art. XI—Hours and Overtime, except for the inclusion of the following:

"Full days of absence or days on which part-time absences occur for the following reasons shall be included in computing the sixth day worked in the workweek:

"A. Injury on job.

"B. Lack of work, including instances where an employee reports with reasonable expectation of work and is sent home because of lack of work.

"C. Appearance before Draft Boards.

"D. Time spent for official services on government agencies, including Draft Boards, War Manpower Commissions, War Labor Board, and War Production Board.

"E. Lack of work on the six holidays designated in Executive Order 9240.

"F. Appearances before court or government or administrative agency as the result of subpoena or other demand or call for appearance by court or administrative agency."

16. Leaves of Absence—Art. XII

There shall be no change in the present contract clause, Art. XII—Leaves of Absence, except for the agreed substitution of the word "then" for the word "thereafter" in said article.

17. Breach of Agreement—Art. XIV

There shall be no change in the present clause of the contract, Art. XIV—Breach of Agreement, except for the agreed elimination of the first sentence thereof.

18. Retroactivity

The wage adjustments ordered herein shall be retroactive to Apr. 29, 1944, the date this case was certified to the National War Labor Board.

The procedure to be followed in making the retroactive payment to those employees who have either quit or been discharged shall be in accordance with the National War Labor Board's resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect fifteen (15) days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree, provided that, the 15-day period referred to in Par. 1 above shall be deemed to run from the date of this order.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order effective immediately.

Signed by Frederick H. Bullen, O. W. L. Coffin, Harry J. Dworkin, and C. M. Finfrock, public members, Mr. Dworkin subject to dissent on Par. 6 and Mr. Finfrock subject to dissent on Pars. 3 and 4; Rudolf Homan, D. D. Reichow, Raymond S. Livingstone, and C. C. Bradford, employer members, subject to dissent on Pars. 1, 2 (Secs. 1 and 6), 3, 4, 9, 10, 11, revision in Par. 15, and Par. 17; and J. W. Childs, Matthew DeMore, Frank C. Vincent, and John W. Wilse, labor members, subject to dissent with opinion on Pars. 5, 6, 7, 8 and 18.

Dissenting Opinion of Labor Members of Regional Board V

Dec. 6, 1944

VINCENT, DEMORE, CHILDS, and WILSE, Labor Members:—The labor members of the Fifth Regional War Labor Board, dissenting from the directive order in respect to retroactivity, believe that the four public members and four industry members erred in establishing the retroactivity as of date of certification, Apr. 29, 1944.

A release of the National War Labor Board of Oct. 19, 1944, stated that its "policy, which it expects its agencies to follow," is:

"To use the date agreed upon by the parties or fixed by their contract or where an existing contract contains a

wage reopening clause, the date when the wage issue was actually reopened; or, in the absence of any such agreement, the date of expiration of a previous agreement governing the same bargaining unit."

The public and industry members did deviate from this policy, knowing full well that the contract between the parties was signed on Mar. 6, 1943, for the duration of 11 months, except for the provision relating to wages which provided:

"Either the Company or the Union may reopen negotiations concerning wages or classifications by giving 30 days notice. Job classifications and rate progressions have been agreed upon between the Union and the Company, and copies of such job classifications and rate progressions have been initiated on behalf of the Union and the Company."

As per the provisions of the above paragraph, the union did, on Feb. 1, 1944, in a letter to the company, open negotiations for night-shift bonus as well as changes in contract provisions. Under the terms of this provision and in accordance with National Board policy, the union is most certainly entitled to retroactivity to Mar. 6, 1944. It is the hope of the labor members of the Fifth Regional War Labor Board that the National Board will reverse this Regional Board and order retroactivity to Mar. 6, 1944, in accordance with its policy on retroactivity.

*Report and Recommendation of the Panel**

Oct. 6, 1944

ISSUES

1. Union security and check-off,
2. Grievance procedure,
3. Ten-cent per hour night-shift bonus,
4. Vacation pay,
5. Rate paid for downtime,
6. Time studies,
7. Two ten-minute rest periods, one in the morning and one in the afternoon,
8. Proposed revised contract submitted by the company, and
9. Retroactive date.

PRELIMINARY STATEMENT

It will be noted that the eighth issue is a proposed revised contract offered by the company. The first seven issues have been raised by the union. The company, in their revised contract, suggests modifications, alterations, amendments, or substitutions for every article in the existing contract except four, as follows: Art. IX, Wages; Art. XI, Hours and Overtime; Art. XIII, Bulletin Boards; and Art. XV, Term of Contract. In the case of Art. IX, Wages, of the existing contract, the company, by stipulation, withdrew any objection on its part to said article.

The union on the other hand, during the course of the panel hearing, suggested alterations, amendments, deletions, or substitutions, in addition to the seven primary issues, affecting Art. VIII, Military Service; Art. XI, Hours and Overtime; Art. XII, Leaves of Absence; and Art. XIV, Breach of Agreement; of the existing contract. The union, by stipulation, withdrew its objection to Art. XV, Term of Contract, and also by stipulation agreed to withdraw its proposal concerning call-in pay as covered by the next before the last paragraph of Art. XI, Hours and Overtime, of the existing contract.

By stipulation both parties agreed to the elimination of the first sentence in Art. XIV, Breach of Agreement, of the existing contract, from the provisions of the new contract.

The union, at the close of the hearing, raised Issue 9, Retroactive Date.

In the interest of clarity and logical sequence, the panel will dispose of the issues in their order, except company proposals affecting the same subject matter as raised individually by the first seven issues, will be discussed and disposed of in the respective recommendation. Any proposals of the company, not so disposed of, will be covered under Issue 8 by subheads.

THE PARTIES

A. The Company

The Ohio Brass Company, organized May 22, 1902, is a corporation operating two plants, one at Mansfield, Ohio, and one at Barberton, Ohio. It is engaged in the manufacture of rail bonds, car and coach equipment for the transit industry, materials for electrified mine haulage systems and electrified railroads, signal bonds, brass valves, insulation and accessories for electric power distribution and transmission systems, and special items for the Army and Navy.

* Ed. Note: Only that portion of the panel report pertaining to grievance procedure is reproduced.

Except for the special items for the Army and Navy, their production is both peacetime and wartime, and all production is considered essential to the war effort. Both plants have a three-shift schedule with a 48-hour week being normal at present. The total number of employees in both plants is approximately 1,700, with approximately 1,300 involved in this dispute. Of the number of employees involved in this dispute, there are approximately 200 females in each of the plants. The peacetime employment is about the same, except for female employees, which drops to 35 at Mansfield and 6 at Barberton. The proportion of employment on the second and third, in comparison to the first shift, is quite low.

B. The Union

The union was recognized at the Barberton plant in February 1939 and at Mansfield in October 1941. The first contract was dated Feb. 25, 1942. The present contract is dated Mar. 6, 1943, and is still in effect and is an open-shop type. The contract covers both plants and is negotiated between the company and both locals.

BACKGROUND

On Feb. 1, 1944, the union, in writing, gave notice to the company through the executive vice-president, proposing certain changes in the existing agreement. Thereafter and including Mar. 13, 1944, four conferences were held between the union and the company without resolving any issue. Within the next four weeks, four additional meetings were held with the assistance of a United States Conciliator, resulting in the settlement of one issue. On Apr. 29, 1944, the matter was certified to the National War Labor Board and referred to the Regional War Labor Board on May 8, 1944.

Informal hearings were held in Cleveland, Ohio, on May 31, 1944, June 9, 1944, and Aug. 10, 1944, and all parties present were given an opportunity to hear, be heard, and given evidence to support their respective positions; also to question and discuss oral testimony as well as information submitted in briefs.

DISCUSSION OF ISSUES

[ED. NOTE: Issue 1, discussed in the panel report at this point, is omitted.]

2. Grievance Procedure

Union's Position

The union proposes the following article on grievances:

"The Union, as the sole bargaining agent, shall be consulted on the disposition of any grievances involving any subject covered by this contract before the Company takes any action on such grievance. All grievances and replies thereto must be in writing. Employees shall have the right to present grievances to management at any time, subject to the following procedure:

"Step 1. The aggrieved employee and/or his department steward may present a grievance to the foreman.

"Step 2. If the grievance is not satisfactorily adjusted within two working days, it may be taken up with the personnel department, by the steward and/or the shop committee, consisting of not more than five employees.

"Step 3. If a satisfactory adjustment is not made within two working days, the grievance may be taken up with the executive vice-president of the company or such person as may be designated by him with authority to act for him by the officers of the Union or any representative authorized to act for it.

"Step 4. If the matter is not satisfactorily adjusted within five working days, the parties agree to call in a conciliator of the Conciliation Service of the U. S. Department of Labor for further consultation on the grievance and an effort to adjust it.

"Step 5. Any grievance under this contract may go to arbitration, if the parties have been unable to reach a settlement in accordance with the grievance procedure outlined above.

"The arbitrator shall be selected by the Union and the Company within one week after the need for the arbitrator's services arise. In case the Union and the Company cannot agree upon an arbitrator, then the president of the Ohio State University shall appoint him. The decision of the arbitrator shall be binding upon all parties to the dispute. The expense of arbitration shall be borne equally by the Union and the Company."

Grievances requiring immediate action may be presented by such members of the shop committee as are designated by the union.

A department steward or a member of the shop committee desiring to leave his work for the purpose of con-

ferring with a designated union official or member in the same plant, with respect to a grievance requiring immediate attention, shall apply for and receive a permit from his foreman so to do. Such application or permit shall designate the part of the factory to which the person entitled to the permit wishes to go.

No employee, with respect to whom a grievance is filed, shall be summoned for a dissolution with a company official concerning the grievance on wages, hours, or other conditions of employment unless a member of the shop committee shall be present at such discussions.

Whenever an increase in wages is promised to an employee by a foreman or other company official, simultaneous notice thereof shall be given to the shop committee.

When the company desires to discharge an employee, it shall first suspend the employee until the union has had an opportunity to take up his case through the regular grievance procedure. When an employee is about to be sent home as a result of any type of disciplinary action including suspension, discharge, or other cause, the company shall ask the employee whether he wishes to see a union representative before he leaves the plant and shall promptly send for a union representative designated by the shop committee, if the employee so desires.

Shop stewards and members of the negotiating committee shall be compensated by the company for the earnings lost in the handling of grievances.

The following proposed changes, the union deems of particular importance:

(a) Grievances requiring immediate action may be presented by the shop committee at any time.

(b) When an individual presents a grievance without the union, the company shall bargain with the union before making any disposition of the grievance.

(c) The company shall not negotiate on grievances or any other matters for which the union has been certified as the bargaining agent with any group of employees unless a union representative is present.

The union, by the terms of the contract, obligates itself to oppose strikes, sitdowns, slowdowns, or stoppage of work. While, on the other hand, the existing grievance procedure prevents union officials from immediate and free access to the source of trouble in the plant. Only members of the negotiating committee as are not on duty are permitted to present emergency grievances. Members of the negotiating committee, not on duty, are usually home and not around the plant. Therefore, the union is not in a position to carry out the above obligation under the present grievance procedure.

As for the matter under sub-heads (b) and (c) above, the union believes such terms should be included in the contract since it is the sole bargaining representative of all employees and is therefore, as a party to the contract, directly and vitally interested in the disposition of a grievance and also the application of the solution of a grievance to the terms of the contract. In support of its contention, the union submits the opinion of the general counsel of the National Labor Relations Board with respect to the discussion and negotiation of grievances by an employer with individual workers in a plant under a union contract.

Company's Position

Under the eighth issue, the company proposes the following article to define the question on grievances:

If an employee shall believe that he has suffered a grievance which he has been unable to adjust with his foreman, he may either present it himself or may avail himself of the union to present his grievance. In the latter case the procedure hereinafter set forth shall be as follows:

(a) Between the aggrieved employee and/or his department steward and his foreman.

(b) If the grievance is not satisfactorily adjusted within two working days, it may be taken up with the personnel department, by the steward and/or the union committee, consisting of not more than five employees.

(c) If a satisfactory adjustment is not made within two working days, the grievance may be taken up with the executive vice-president of the company and/or such person or persons as may be designated by him to act for him by the officers of the union or any representative authorized to act for it. If the matter is not satisfactorily adjusted within five working days, the parties agree to call in a conciliator of the Conciliation Service of the Department of Labor for further consultation on the grievance and an effort shall be made to adjust

it. Grievances requiring immediate action may be presented, by such members of the negotiating committee as are not on duty at the time, to the management. All grievances and replies thereto must be in writing.

After a company representative or representatives have made a reply to a grievance in any step of the foregoing procedure, such company representative or representatives shall have no duty or obligation to discuss or consider the matter further.

Stewards, officers, and union committeemen referred to above shall present and handle such grievances at times other than during their working hours. All such stewards, officers, and committeemen of the union shall observe and perform their regular duties during their working hours and shall not depart from their duties and work for a purpose of presenting or handling grievances.

In computing time limits under this article, unscheduled work days and holidays shall not be counted.

Except as otherwise expressly provided in this agreement, any such grievance shall involve the interpretation or application of the provisions of this agreement, and, if such grievance shall not have been satisfactorily settled by the procedure set forth above, it may be submitted by either party to an impartial umpire who shall be appointed by written agreement of the company and the union within 10 days after the party who shall intend so to submit such grievance shall have given to the other party written notice of the intention of the party giving such notice so to submit such grievance. If, within 15 days, the company and the union shall not agree upon the appointment of such impartial umpire, either the company or the union may, in writing, a copy of which shall be delivered to the other party, request the president of the Ohio State University to appoint within 7 days such impartial umpire. The grievance shall be submitted to the impartial umpire in writing, and he shall afford the employee or employees concerned, the union, and the company, a reasonable opportunity to present evidence and to be heard in support of their respective positions with regard to the grievance. The impartial umpire shall make a decision within 20 days after any grievance shall have been submitted to him in accordance with the provisions of this agreement, and he shall confine his decision to determination of the facts and an interpretation of the contract, but, in such respects, his decision shall be final and binding on the company and the union and all employees concerned therewith. The compensation of such impartial umpire for his services and his expense in connection therewith shall be shared equally between the company and the union, and proper surety shall be furnished by each party respectively to cover such services and expenses prior to the hearing in such arbitration. The umpire shall, in so far as shall be necessary to the determination of any grievance so submitted to him, have authority to interpret and apply the provisions of this agreement, but he shall not have authority to alter in any way such provisions or the rights created thereby. If the company and the union shall so agree in writing, any other question may be referred to an impartial umpire for determination, but no other question may be submitted to an impartial umpire for determination unless the company and the union so agree in writing.

The company opposes the provision advocated by the union to the effect that grievances requiring immediate action may be presented by the committee at any time. This position is taken because the proposal would permit shop committee members to give attention to grievances at the cost of production, and, further, because present procedure adequately insures prompt presentation and consideration of grievances, and there is no showing to the contrary warranting a change.

The company opposes the provision advocated by the union to the effect that when an individual or group of individuals presents a grievance without the union, the company must bargain with the union before disposing of the grievance. This position is taken because the proposal is a violation of the safeguard contained in the proviso in Sec. 9(a) of the National Labor Relations Act.

The company opposes the request of the union for compensation of shop stewards and members of the negotiating committee for earnings lost in the handling of grievances. This stand is predicated upon the contention that, in the proceedings before United States Conciliator Moran, the union expressly stated that this was not an issue. Secondly, the company points out that the union members, by way of dues, pay for this service

and that the obligation should not be shifted to the company. Further, the company argues that there is no evidence to support this demand within the requirements which the National War Labor Board has laid down in a recent decision McQuay-Norris Mfg. (1943), 9 War Lab. Rep. 538.

The article on grievances, as proposed by the company, is advanced generally in the interest of clarification.

Discussion

The panel, with the industry member dissenting, is of the opinion that, in the interest of production and curtailment of unrest on the part of employees, emergency grievances should receive the immediate attention of company and union officials; that the union should not be restricted in its summary action in an attempt to control any spontaneous action, detrimental to production, on the part of the employees and that, therefore, the union request in this respect is reasonable and should be approved. The union proposes a control to obviate any abuse of such privilege which appears to be properly in order.

The two points, indicated by subheads (b) and (c), as set forth in the union position, appear to be closely related. It appears to a majority of your panel that the union, as the bargaining representative of all the employees, should be consulted before a final disposition is made of any grievance, in order that the union, as a party to the contract, may present its own point on the application and interpretation of the terms of the contract to the matter under discussion. The panel, the industry member dissenting, believes the first sentence of the union's proposed article on grievances should be approved. Your panel, with labor dissenting, believes by the adoption of the foregoing matter the union is amply protected and, therefore, decides that the fourth paragraph of the union's proposal on grievances should be disallowed.

Because of the lack of any showing for the necessity of the matter carried in the fifth and sixth paragraphs, the panel, with labor member dissenting, believes that these two paragraphs should not be approved.

Concerning the proposal of the union for compensation of union representatives for the time spent in handling grievances, it is not apparent that such provisions are indispensable to the proper functioning of the grievance procedure or that the payment of such compensation would result in better functioning of the existing procedure. For this reason, your panel with labor member dissenting, does not believe that compensation for union representatives for time spent in handling grievances should be introduced at this time.

The company's proposed article on grievances contains two elements that your panel believes would be salutary in the interest of clarification. These elements are (1) the spelling out of the procedure in selecting an arbitrator and (2) the exclusion of unscheduled work days and holidays in computing time limits. The remainder of the proposed article, your panel, with the industry member dissenting, believes should be disapproved on the grounds that no particular necessity is shown for adoption.

Recommendation

The majority of the panel, with the dissents as heretofore noted, recommends the following as the article covering the subject of grievances:

"Any individual employee, or group of employees, shall have the right, at any time, to present grievances to the Company. The Union, as the sole bargaining agent, shall be consulted on the disposition of any grievance involving any subject covered by this contract before the company takes any action on such grievance. Subject to the foregoing rights, any grievance of an employee shall be taken up in the following manner:

"(a) Between the aggrieved employee and/or his department steward and his foreman.

"(b) If the grievance is not satisfactorily adjusted within two working days, it may be taken up with the personnel department by the steward and/or the shop committee, consisting of not more than five employees.

"(c) If a satisfactory adjustment is not made within two working days, the grievance may be taken up with the executive vice-president of the company or such person as may be designated by him with authority to act for him, by the officers of the union, or any representative authorized to act for it. If the matter is not satisfactorily adjusted within five working days, the parties agree to call in a conciliator of the Conciliation Service of the Department of Labor for further consultation on the grievance and an effort made to adjust it.

"(d) If such grievance shall not have been satisfactorily settled by the procedure set forth above, it may be submitted by either party to an impartial umpire who shall be appointed by written agreement of the company and the union within ten days after the party who shall intend so to submit such grievance shall have given to the other party written notice of the intention of the party giving such notice so to submit such grievance. If the company and the union shall not agree upon the appointment of such impartial umpire, either the Company or the Union may, within ten days thereafter, in writing, a copy of which shall be delivered to the other party, request the president of the Ohio State University to appoint within seven days such impartial umpire. The grievance shall be submitted to the impartial umpire in writing, and shall afford the employee or employees concerned, the union, and the company, a reasonable opportunity to present evidence and to be heard in support of their respective positions with regard to the grievance.

"The impartial umpire shall make a decision within 20 days after any grievance shall have been submitted to him in accordance with the provisions of this agreement, and he shall confine his decision to determination of the facts and an interpretation of the contract, but, in such respects, his decisions shall be final and binding on the company shall be final and all employees concerned therewith. The compensation of such impartial umpire for his services and his expenses in connection therewith shall be shared equally between the company and the union. The umpire shall in so far as shall be necessary to the determination of any grievance so submitted to him, have authority to interpret and apply the provisions of this agreement, but he shall not have authority to alter in any way such provisions or the rights created thereby.

"All grievances and replies thereto must be in writing. Grievances requiring immediate action may be presented at any time by such members of the shop committee as are designated by the union.

"A department steward or a member of the shop committee, before leaving his work for the purpose of conferring with a designated union official or member in the same plant with respect to a grievance requiring immediate attention, shall first apply for and receive a permit from his foreman so to do. Such application or permit shall designate the part of the factory to which the person entitled to the permit wishes to go.

"In computing time limits under this article, unscheduled work days and holidays shall not be counted."

[ED. NOTE: Issues 3 through 9, discussed in the panel report at this point, are omitted.]

Signed by Frank R. Uible, representing the public; George S. Hedley, representing employees, subject to dissent with opinion on Issues 1, 2, 3, and 5; and Russell N. Chase, representing labor, subject to dissent with opinion on Issues 2, 4, 5, 6, 7, and 8.

Dissenting Opinion of Labor Representative

Oct. 9, 1944

I dissent from the majority opinion in the above case for the following principle reasons:

GRIEVANCE PROCEDURE

It is the opinion of the undersigned that the union's proposal on grievance procedure as contained in this panel report provides a more satisfactory method for adjusting grievances than the recommendation of the majority. My chief objections are to the elimination of the fourth, fifth, and sixth paragraphs in the union's proposal.

The sixth paragraph in the union's proposal provides for payment by the company of lost time to the shop stewards and members of the negotiating committee. I believe that, from the evidence submitted in this case, such a provision will be decidedly helpful in the handling of grievances in the plant. At the present time, the company refuses to permit handling of grievances on company time when grievances can be handled most effectively.

The War Labor Board has ordered payment for lost time to stewards in a number of recent cases. Among them were the following: Van Doren Iron Works, 5-D-521, July 21, 1944; Lexington Telephone Company, and Toledo Steel Products, 5-D-212.

[ED. NOTE: Issues 4, 5, 6, 7, and 8, discussed in the dissenting opinion at this point, are omitted.]

Signed by Russell N. Chase, representing labor.

Dissenting Opinion of Employer Representative

Oct. 6, 1944

Your industry member dissents in respect to the following recommendations of the public and labor members, as follows:

1. Maintenance of membership and compulsory check-off;
2. Grievance procedure;
3. Night-shift bonus;
8. Art. III, rights of employees;
   Art. IV, seniority;
   Art. VI, company prerogatives;
   Art. XII, leaves of absence;
   XVI, breach of agreement; and
9. Retroactive date.

[ED. NOTE: Issue 1, discussed in the dissenting opinion at this point, is omitted.]

2. GRIEVANCE PROCEDURE

(a) No evidence was presented to show that any need exists for permitting employees to cease work and stop necessary production in order to present a grievance at any time. If the employees understand that their work is not to be interrupted to present arguments in respect to grievances, it is obvious that production should be greater than if the work is stopped. The idea that such interruption of work would help production is contrary to fact and not supported by any concrete evidence.

(b) The proposal of the union that it be consulted before disposition is made of any grievance is in violation of the National Labor Relations Act, Sec. 9(a) and the interpretation which is contained in the decision of the United States Circuit Court of Appeals for the Ninth District entitled "NLRB vs. North American Aviation Company" 136-FED(2d) 89A. In this case, the court held that the word "present" used in the sense of "to present" means "to offer for judicial action or inquiry, to lay before or submit to a person or board for consideration or action." The case held that it was proper for the company to act upon the grievance, and it is clear that this case holds that a company shall not be ordered not to take action on a grievance without first consulting with the union.

(c) The following regulation, as proposed by the company, should be incorporated before the arbitration clause:

"Except as otherwise expressly provided in this agreement, if any such grievance shall involve the interpretation or application of the provisions of this agreement and"

This regulation will remove any possibility of ambiguity in respect to anything which is otherwise expressly provided in the contract. Also, grievances which do not involve the interpretation or application of the provisions of the contract have no place in arbitration.

[ED. NOTE: Issues 3, 8, and 9, discussed in the opinion at this point, are omitted.]

Signed by George S. Hedley, representing employers.

MISSOURI-PACIFIC TRANSPORTATION CO.—

Decision of National Board

In re MISSOURI-PACIFIC TRANSPORTATION COMPANY [St. Louis, Mo.] *and* BROTHERHOOD OF RAILROAD TRAINMEN (Ind.). Case No. 111-11361-D, July 3, 1945 (made public Aug. 1, 1945).

MAINTENANCE-OF-MEMBERSHIP — CHECK-OFF—Standard provisions

Union representing employees of interstate bus company is entitled to standard maintenance-of-membership and compulsory check-off provisions.

For other ruling see Index-Digest 20.110 and 110.101 in this or other volumes.

GRIEVANCES—Inclusion of arbitration in procedure

Parties should negotiate arbitration clause to be included in their contract grievance procedure. If they fail to reach agreement in 30 days, issue should be returned to Board.

For other rulings see Index-Digest 60.729 in this or other volumes.

WAGES—GOING WAGE RATES—Interstate bus company

Drivers employed by interstate bus company are entitled to increase bringing rate for first two years to 3.5 cents per mile and rate after two years to 4 cents where (1) company offered such rates on basis of rates paid by

local bus companies with which it competes and (2) average rate paid by all bus companies in states served by company is 4.23 cents per mile. Such award is without prejudice to determination of any further increase justified by slowdown regulations of Office of Defense Transportation.

For other rulings see Index-Digest 250.100 in this or other volumes.

WAGE ADJUSTMENTS—Retroactive date

Awarded wage increase should be retroactive to date about one month after union served notice that it desired to reopen contract.

For other rulings see Index-Digest 225.344 in this or other volumes.

PREMIUM WAGE RATES—Spread hours—Work on days off

Overtime for interstate bus drivers on regularly assigned runs other than straight-away runs should begin after 8 hours in a spread of 10, as requested by union, rather than after 8 hours in a spread of 11, as at present.

Interstate bus drivers working on their regular day off are entitled to receive not less than eight hours' pay at time and one-half their regular rate.

For other rulings see Index-Digest 140.415 and 140.549 in this or other volumes.

VACATIONS—Establishment of plan—Eligibility

Interstate bus company should grant 6 days' vacation to employees with one to 5 years' service and 12 days' vacation to employees with 5 or more years' service, method of computing vacation pay to be determined by parties.

Full vacation allowances should be paid to drivers who are discharged by interstate bus company or who leave company's employ to enter armed services.

For other rulings see Index-Digest 205.106 and 205.112 in this or other volumes.

Majority decision of Board amending recommendations of panel. Public members concurring: Lloyd K. Garrison, Nathan P. Feinsinger, Jesse Freidin, and Edwin E. Witte. Employer members dissenting on Pars. I, III(a), IV, VI(b), VII, VIII, X, XI(a), and XI(b): William Maloney, Charles S. Roberts, Lee H. Hill, and Earl Cannon. Labor members dissenting on Pars. VI(a), IX, XII, and XIV: Robert J. Watt, John Brophy, Carl J. Shipley, and Van A. Bittner.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

I. Union Security

"(a) All employees who, on Aug. 2, 1945, are members of the Union in good standing in accordance with its constitution and by-laws and all employees who become members after that date shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated, or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the National War Labor Board with a notarized list of its members in good standing as of that date.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"(b) If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by the National War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"(c) If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties or, if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, the arbitrator will be se-

lected by the National War Labor Board on due application. The decision of the arbitrator shall be final and binding upon the parties.

"(d) The Company, for said employees, shall deduct from the first pay of each month the union dues for the preceding month and promptly remit the same to the appropriate official of the Union. The initiation fee of the Union shall be deducted by the Company and remitted to the appropriate official of the Union in the same manner as dues collections."

II. Grievances and Arbitration

The parties shall negotiate an arbitration clause to be incorporated in their agreement. If the parties are unable to reach a mutually satisfactory agreement within a period of 30 days, the matter shall be referred back to the National War Labor Board for final disposition together with a statement by the parties setting forth their respective positions.

III. Period of Contract

(a) Retroactivity

The effective date of wage increases shall be Aug. 15, 1944. Any grievance arising subsequent to Aug. 15, 1944, shall be subject to arbitration.

(b) Termination

The contract shall remain in effect for one year and thereafter subject to 30 days' written notice by either party to the other.

IV. Accident Payments

The union's proposal of payment of a cash bonus for freedom from accidents with deductions for chargeable accidents is denied.

V. Written Communications

Written communications from the Brotherhood to the company shall be answered in writing and vice versa.

VI. Mileage Rates

(a) The starting rate shall be $.035. After two years the rate shall be $.04.

This provision is without prejudice to a determination of any further adjustment which may be due by reason of ODT slowdown regulations.

(b) The progression issue is referred back to the parties for negotiation of possible step-up between the hiring rate and the job rate in no less than six-month steps.

VII. Overtime

(a) Regularly Assigned Service Other Than Straight-Away Runs

The union's request for overtime after eight hours in a spread of ten hours is approved.

(b) Truck Drivers Handling Mail

The union's request for overtime after eight hours in a spread of ten hours is approved.

VIII. Payment for Service on Days Off

The union's request that operators working on their regular day off shall receive no less than 8 hours or 160 miles at time and one-half or 30 miles per hour is approved.

IX. Pay for Special and Chartered Service

Minimum pay of $6.00 or $6.40, based on the ordered increase in mileage rates, is hereby ordered for special and chartered service exceeding one undisturbed rest period (24 hours).

X. Daily Rate for Student Operators

A provision for payment of the present rate of $2.50 per day for students shall be included in the contract.

XI. Vacations

(a) Allowances

The company shall grant vacations of 6 days to employees with from 1 to 5 years of service and vacations of 12 days to employees with 5 or more years of service.

The parties shall negotiate the method of computing vacation pay for regular drivers and report the result of the negotiation to the National War Labor Board within 30 days from the issuance of this order.

The vacation pay for extra drivers shall be computed on the basis of two per cent of earnings for one to 5 years' service and four per cent of earnings for 5 or more years' service. The parties shall negotiate the question of what should constitute the various elements of "earnings" and report back to the National War Labor Board within 30 days from the issuance of this order.

(b) Allowance for Operators Leaving Service

Full vacation allowance shall be granted to employees who are discharged by the company and to those entering the armed services.

(c) Time of Vacation

Selection of vacation periods shall be by seniority preference, demands

of the service permitting, except that no vacation shall be granted during the period of three days prior to and three days following Easter, Decoration Day, Independence Day, Labor Day, Thanksgiving, or during the period Dec. 15 to Jan. 9, inclusive. This adjustment shall be effective as of Aug. 15, 1944.

XII. Pay for Regular Operators Hauling Mail

The union's request is hereby denied.

XIII. Payment for Clerical Work

This issue is referred back to the parties for negotiation to work out a method of compensation for extra time worked in light of the references made by the company to reduction in the amount of clerical work.

The parties shall report to the National War Labor Board, within 30 days from the date of this order, the result of such negotiation.

XIV. Pay for Transferring Baggage from One Bus to Another

The union's request is hereby denied.

XV. Allowance for Sleeping Quarters

The union's request for an allowance of $1.00 per night for sleeping quarters is granted.

XVI. Terms of Agreement

The foregoing terms and conditions of employment shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

XVII. Procedure of Retroactive Payment

The procedure to be followed in making the retroactive payments ordered herein to those employees who have either quit or been discharged shall be in accordance with the Board's resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

Report and Recommendations of the Panel

Jan. 8, 1945

I. PARTIES

The Missouri Pacific Transportation Company and the Brotherhood of Railroad Trainmen are in dispute over rates of pay and a considerable number of rules and regulations, most of which have a bearing upon compensation of workers though some of them deal with working conditions in general.

The Missouri Pacific Transportation Company, a subsidiary of the Missouri Pacific Railroad Company, was incorporated in the state of Delaware on Nov. 15, 1928, as a common carrier by motor vehicle, for transportation of passengers, baggage, mail, express, etc. in the several states in which the Missouri Pacific System Lines then operated. It now operates bus lines in association with the National Trailways Bus System in Missouri, Kansas, Nebraska, Arkansas, Louisiana and Texas, but including Cairo (Ill), Memphis, (Tenn.), and Greenville and Natchez, (Miss.).

The Brotherhood of Railroad Trainmen (Ind.) has been recognized since 1938 as the bargaining agent and since that time has had contractual relations covering motor coach operators employed by the company.

The number of employees involved is given as 358 in the official certification, but the actual number is between 250 and 260. (Transcript, p. 62)

II. ISSUES

The issues involved in this case are shown in the following tabulation. All of the items in the list are the same as those included in the official certification with the exception of Art. 26 (Discipline and Grievances) which was first introduced in the hearing briefs submitted by the parties and which was argued at length during the hearing before this panel. It should be stated that some of the sections referred to in the list do not appear in the existing agreement between the parties but represent new material advanced while the case was in conciliation. It should be noted further that several of the items in the following list, originally in dispute, were withdrawn at the time of the hearing, Nov. 20, 1944, by mutual agreement between the parties. [The issues are as follows:]

Art. 1. Rates of Pay—

Sec. 1. Wages,

Secs. 2, 3, 4, Vacations, and

Sec. 5. Penalty and Bonus for Accidents;

Art. 2. Basic Pay and Overtime—

Sec. 1. Straightway and Turn-Around Trips (withdrawn),

Sec. 4. Reporting Time,

Sec. 6. Overtime, Regular Assigned Service,

Sec. 7. Overtime, Unassigned Service (withdrawn),

Sec. 8. Overtime, Truck Operator Handling Mail, etc.,

Sec. 9. Emergency Side, or Lap-Back Trips (withdrawn), and

Sec. 10. Extra Service on Days Off;

Art. 6. Manning of Service—

Sec. 1. Manning of Leased Equipment (withdrawn);

Art. 9. Deadheading—

Sec. 1. Elimination of Daily Guarantee (withdrawn);

Art. 11.* Operation of Extra Boards, Extra Work—

Sec. 1 Operator Failing to Avail Himself for Call (withdrawn),

Sec. 2 Run-Around Extra Men (withdrawn),

Sec. 5. Manning of Special and Chartered Service and Rates Therefor, and

Sec. 6. Rates for Regular Operator Used When No Extra Men Available (withdrawn);

Art. 14. Called and Not Used—

Sec. 1. Penalty Rate (withdrawn);

Art. 20. Miscellaneous—

Sec. 8. Sleeping Quarters, and

Sec. 9. Union Security;

Art. 21. Special Service—

Sec. 1. Rate of Pay for Changing Tires (withdrawn),

Sec. 2. Rate for Handling Mail, etc. by Regular Operators,

Sec. 3. Rate for Student Operators,

Sec. 4. Rate for Regular Operators Instructing Students,

Sec. 5. Rate for Transferring of Baggage, and

Sec. 6. Accident and Health Policy (withdrawn);

Art. 26. Discipline and Grievances. (New issue, not in certification, though reported agreed upon during conciliation proceedings);

Art. 28. Duration of Agreement—

Sec. 1. Effective Date of Contract and Duration.

The original agreement between the parties, effective as to rates on Jan. 1, 1945, and as to rules on Mar. 1, 1944, was opened for negotiation July 12, 1944, when the Brotherhood of Railroad Trainmen notified the Missouri Pacific Transportation Company that it desired to make certain changes in rates of pay and in certain working conditions, some of which would affect earnings of operators. The company submitted a counterproposal in August 1944, whereupon the Brotherhood advanced a new and enlarged set of demands. The Conciliation Service of the U. S. Department of Labor entered the picture in September 1944, and agreement was effected as to Arts. 3, 8, 13 and 26 (though certain aspects of Art. 26 were later injected into the hearing before this arbitration panel). A deadlock resulted as to the other issues listed above, and the case was certified to the National War Labor Board on Oct. 9, 1944.

III. DISCUSSION AND RECOMMENDATIONS

Art. 1. Rates of Pay

Sec. 1. Rates—The rates of pay established by the existing agreement calls for 3¼ cents per mile for operators of less than two years' service and 3¾ cents per mile for operators having two or more years of service. These are equivalent to 65 cents and 75 cents per hour on the basis of the customary equivalent of 20 miles per hour. During the renegotiation period the company had agreed to an increase of one-fourth cent per mile in both rates, that is, to 3½ cents per mile and four cents per mile for the two steps, respectively. The Brotherhood's demand was for 4½ cents per mile and five cents per mile, respectively.

The company contended, both in its brief and at the hearing, that though it is a subsidiary of a large and important railroad system, its rates of pay for motor bus operators should be compared with those of local bus companies in its territory, with which it is in competition, rather than with rates paid by other larger bus companies such as the Greyhound Lines, Santa Fe, and Burlington.

The Brotherhood, on the other hand, contended for comparison with the higher rates of pay paid by some of these larger operating companies.

The panel studied these rates of pay with great care in an effort to determine whether the schedules reveal any tendency toward a model pattern. These schedules, taken from exhibits submitted by the parties, show a wide range of both minimum and maximum rates and also considerable variation in the progression plans. They furnish little or no guidance as to what constitutes a fair scale of payment.

* In official certification papers, this was erroneously indicated as Art. 12.

Company Exhibits

Length of Service or Classification	Rate of Progression
Missouri-Arkansas Coach Lines, Inc.	
Less than 6 Months	$.03
6 Months to 1 Year	.0333
1 Year to 2 Years	.035
2 Years to 3 Years	.0375
Over 3 Years	.04
Arkansas Motor Coaches	
1st 6 Months	.025
2nd 6 Months	.0275
Over 1 year	.03
Over 2 Years	.0325
Over 3 Years	.0325
Bowen Motor Coaches	
1st 6 Months	.032
2nd 6 Months	.0353
3rd 6 Months	.0386
Next 18 Months	.0399
Over 3 Years	.0413
Dixie Motor Coach Company	
1st Classification	.03375
2nd Classification	.02875
3rd Classification	.02625
Crown Coach Company	
1st Year	.0335
2nd Year	.0355
2 to 3½ Years	.0375
Over 3½ Years	.0400
Gulf Transport Company	
Less than 2 Years	.035
Over 2 Years	.0375
(Approved by WLB July 21, 1944)	
Interurban Transportation Company	
Less than 1 Year	.03
1 to 2 Years	.0325
2 to 3 years	.035
3 to 4 Years	.0375
4 to 5 Years	.04
5 Years and Over	.0425
Tri-State Transit Company	
1st 6 Months	.02875
6 Months to 1 Year	.03
1 Year to 2 Years	.0325
2 Years to 3 Years	.035
3 Years to 4 Years	.0375
4 Years to 5 Years	.04
5 Years and over	.0425

Company Exhibits—Contd.

Length of Service or Classification	Rate of Progression
Santa Fe Trail Transportation Company (Western Lines)	
1st 6 Months	.0361
2nd 6 Months	.0389
3rd 6 Months	.0417
Next 18 Months	.0445
Thereafter	.0475
(Now in Dispute Application for Increase in Rates of Pay upon ODT Slowdown Regulations.)	
Pacific Greyhound Lines	
1st 6 Months	.0361
2nd 6 Months	.0389
3rd 6 Months	.0417
Next 18 Months	.0417
Thereafter	.0475
(Now in Dispute Application for Increase for Slowdown)	
Burlington Transportation Company	
For Coaches having Capacity of 16 or less	.041
For Coaches having Capacity of 17 or more	.046
(Now in Dispute Application for Increase for Slowdown)	

Overland Greyhound Lines

The rates, effective Oct. 1, 1942, were stated to be the same as those of the Santa Fe (see above), but increases amounting to about 12 per cent in each step had been granted by the War Labor Board on Dec. 29, 1943, retroactive to Oct. 15, 1942, the date of the slowdown speed order of the ODT. This change gives a minimum rate of 4.04 cents per mile and a maximum rate of 5.32 cents per mile.

Under date of Dec. 12, 1944, the Bureau of Labor Statistics issued Releases No. 245 and 246, which represent studies of bus companies in Arkansas, Iowa, Kansas, Missouri, and Nebraska. Release No. 245 covers 29 establishments, and Release No. 246 covers eight of the 29 which employ 50 or more workers. The pertinent data as to bus operators are as follows:

Straight-Time Hourly Earnings

Release No.	No. of Operators	No. of Companies	Gen'l Aver.	Lowest Aver.	Highest Aver.	Mid-Point
245	1200	29	$1.10	$0.429	$1.286	$0.8575
246	1015	8	1.146	0.728	1.286	1.057

Unofficial information that came to the attention of the panel indicated that the hourly earnings in the above table are based upon an average schedule of 26 miles per hour, in which case the rates per mile would be as shown below:

Rates per Mile (26 Miles per Hour)

Release No.	Gen'l Aver.	Lowest Aver.	Highest Aver.	Mid-Point
245	$.0423	$.0165	$.0495	$.0330
246	.0440	.0280	.0495	.0388

The panel concludes a compromise between the rates proposed by the company and by the Brotherhood represents the fairest solution of this problem and accordingly recommends rates of four cents per mile and 4½ cents per mile for the 2 steps of the Missouri Pacific rate schedule. The top rate, equivalent to 90 cents per hour, is close to the mid-point of the BLS rates tabulated above for a number of companies, some of which are of small size and so not strictly comparable. Furthermore, operators under present war conditions, which have resulted in greatly increased traffic, have to assume more than usual responsibility and more than the ordinary amount of clerical work.

Sec. 2. Vacations—Both parties agree that there shall be an annual vacation with pay, but the company proposed a six-day vacation (after 2 years of service) to operators who in the preceding year had served not less than 60 per cent of that year. The Brotherhood asked for two consecutive weeks of vacation after two years of service. On the other hand, the company had announced its intention to grant an additional vacation as a bonus for a clean accident record.

The panel agrees that it is preferable to model the vacation plan upon the pattern in general use in other industries and therefore recommends the adoption of the following wording:

"Sec. 2. Operators shall be granted an annual vacation with pay. Regular operators with one year but less than five years of service will be granted an annual vacation of six days at the daily wage of the assignment held when vacation is taken exclusive of overtime and other extra allowances. Regular operators with five or more years of service will be granted an annual vacation of 12 days with pay at the daily wage of the assignment held when vacation is taken exclusive of overtime and other extra allowances. Extra operators having one year but less than five years of service will be allowed 160 miles, at prevailing rates of pay, for each day of a six-day annual vacation; and extra operators having five or more years of service will be allowed 160 miles at prevailing rates of pay for each day of a 12-day annual vacation."

Sec. 3. Time of Vacation—Both parties agree that vacation period shall be selected by seniority preference though the company added the phrase "demands of the service permitting;" and the company furthermore rules out certain periods prior to and following generally recognized holidays when travel is usually heavy.

The panel agrees that the company's proposal, with the phrase "demands of the service permitting" deleted, is reasonable and therefore recommends the following wording:

"Sec. 3. Vacation period shall be selected by seniority preference except that there will be no vacation granted during the period three days prior to and three days following Easter, Decoration Day, Independence Day (July 4), Labor Day, Thanksgiving Day, and during the period December 15 to January 9, inclusive."

Sec. 4. Vacation Allowances for Operators Leaving Service—Brotherhood asked for vacation allowances for operators leaving company employment to enter military service and for operators discharged by the company. The company proposed the cancellation of all vacation allowance for employees terminating their employment prior to the taking of a vacation.

The panel agrees that the following regulation should be adopted:

"Sec. 4. In the event that an operator entitled to an annual vacation leaves the employ of the Company, he shall receive all annual vacation allowance due, but not received, at the beginning of the anniversary year in which the severance of employment occurs. The foregoing shall not apply to operators leaving the service of the Company of their own volition."

The panel desires to state that the final sentence in the wording of Sec. 4 has been included because it appears in the Brotherhood's proposals, but the panel believes that it should be deleted on the ground that it is discriminatory and deprives a possibly worthy individual of a benefit to which he had become eligible.

Sec. 5. Penalty and Bonus for Accident Record—The company has withdrawn its proposal for a penalty of ⅛ cent per mile (for periods up to one year) for chargeable accidents. The Brotherhood's demand for a bonus seems to have been injected in retaliation against the penalty proposed. Accordingly, the panel agrees that the Brotherhood's demand for a cash bonus should be denied.

Art. 2. Basic Pay and Overtime

Sec. 1—By agreement between the parties, this section has been withdrawn as an issue in dispute, and the section therefore remains as written in the existing agreement.

Sec. 4. Extra Time for Clerical Work—The Brotherhood's original proposal and the company's counterproposal made no mention of this section. In the Brotherhood's final proposal, a demand was made for extra compensation for clerical work.

The panel agrees that Sec. 4 of Art. 2, as printed in the original agreement between the parties, should remain unchanged. Nevertheless, it appears from testimony at the hearing that the amount of clerical work required of operators is more time consuming than in other competing lines, and the panel therefore urges that the company give consideration to possible simplification of the records in order to reduce this extra time to a reasonable minimum.

Sec. 6. Overtime, Regular Assigned Service—The issue here is whether overtime shall be computed on the basis of 8-within-11 hours, as proposed by the company, or on an 8-within-10 hours' basis, as proposed by the Brotherhood.

The panel agrees that this section should remain as originally written, that is, on the basis of 8-within-11 hours, on the ground this practice seems to be fairly well established in the industry.

Sec. 7. Overtime, Unassigned Service—This issue having been withdrawn by mutual consent of the parties, the section remains as written in the original agreement.

Sec. 8. Overtime, Truck Operator, Handling Mail, etc.—In the original agreement, overtime is computed on the basis of 8 hours within 12. The Brotherhood's first proposal called for 8-within-10 hours; the company countered with 8-within-11; and the Brotherhood's final proposal remained on the basis of 8-within-10.

The panel agrees in recommending the adoption of the amended wording as proposed by the company during the preliminary negotiations except that the flat rate of $6.70 for eight hours or less should be modified to maintain the present differential between this classification and that of regular operators.

Sec. 9. Emergency Side or Lap-Back Trips—By mutual agreement between the parties this issue is withdrawn, and the original section remains as written.

Sec. 10. Service on Days Off—This section does not appear in the original agreement. It was not included in the Brotherhood's first proposal or in the company's counterproposal and was injected in the Brotherhood's final counterproposal.

The panel recommends that the Brotherhood's request be denied.

Art. 6. Manning of Service; and Art. 9. Deadheading

In both of these issues the company withdrew the proposals submitted during the preliminary negotiations, and the Brotherhood stood on the original agreement. Accordingly, both articles should remain as they appear in the original agreement.

Art. 11. Operation of Extra Boards—Extra Work

Sec. 1—The company withdrew its proposal; the Brotherhood had advanced none. Consequently this section remains as written in the original agreement.

Sec. 2—Both the company and the Brotherhood withdrew their proposals for changes, so this section remains as written in the original agreement.

Sec. 5. Special and Chartered Service—The panel agrees that Sec. 5, as it appears in the original agreement, should remain in effect.

Sec. 6—The company withdrew its proposed change, the Brotherhood made no requests, hence this section remains as written in the original agreement.

Art. 14. Called and Not Used

Both parties withdrew their proposals for changes, hence the article remains as written in the original agreement.

Art. 20. Miscellaneous

Sec. 7. Written Communications—No such section appears in the official list of issues in dispute, nor is there any reference to such a section in the

Brotherhood's Exh. C. It appears, however, in Exh. A (p. 4) submitted by the company and reads as follows:

"Sec. 7. Written communications from the Brotherhood to the Company shall be answered in writing and vice versa."

The panel agrees that this new section should be approved.

Sec. 8. Sleeping Quarters—There is no such section in the original agreement. It appears in the Brotherhood's original proposal and in their counterproposal, but it was rejected by the company.

The panel agrees to accept the proposal as submitted by the Brotherhood except that the allowance of one dollar ($1.00) for room allowance be replaced by a 50-cent allowance. This recommendation is predicated on the supposition that the War Labor Board has approved a similar allowance, included in an addendum to the Santa Fe contract dated Jan. 1, 1943, and which was to go into effect Jan. 1, 1944.

Sec. 9. Maintenance of Membership—The original contract does not include a maintenance-of-membership clause. The Brotherhood proposed such a clause in its original proposal, the company rejected it, and the Brotherhood then asked for both maintenance of membership and check-off.

The panel recommends the inclusion of the standardized maintenance-of-membership clause reading as follows:

"(a) All employees who on ———— are members of the Union in good standing in accordance with its constitution and by-laws and all employees who become members after that date shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the Regional War Labor Board with a notarized list of its members in good standing as of that date.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"Neither shall the employer intimidate or coerce employees into withdrawing from or refrain from joining the Union.

"(b) If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by the Regional War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"(c) If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties or, if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, the arbitrator will be selected by the Regional War Labor Board on due application. The decision of the arbitrator shall be final and binding upon the parties."

Any party desiring to post or otherwise publish an official explanation by the National War Labor Board of the foregoing maintenance-of-membership provision may use the [standard] form of notice [and] procedure to be followed in administering the maintenance - of - membership provision in the absence of some other procedure agreed to by the parties [12 War Lab. Rep. XXVIII; WCDS 321].

The panel further recommends that the Brotherhood's demand for check-off be denied.

Art. 21. Special Service

Sec. 1—By mutual consent of the parties, this section was withdrawn from dispute and remains as written in the original agreement.

Sec. 2. Rate for Handling Mail, etc., by Regular Operators—The original agreement provides extra pay of 50 cents for operators required to handle 25 or more pouches, sacks, or outside parcels of U. S. Mail during a day's assignment. The Brotherhood proposed that the extra pay be $1.00 for 15 or more such bundles. The company rejected this proposal.

The panel agrees that this section should remain unchanged and that the Brotherhood's request be denied.

Sec. 3. Rate for Student Operators—This section, which does not appear in the original agreement, was not included in the Brotherhood's first proposal but was included for the first time in the Brotherhood's final counterproposal.

The panel recommends that the Brotherhood's request for $3.00 per day for student operators be denied and recommends that present practice with respect to student operators be continued.

The panel takes no position as to whether student operators are properly a part of the bargaining unit represented by the Brotherhood.

Sec. 4. Rate for Instructing Students—The same introductory remarks that appear under Sec. 3 (above) apply to this section.

The panel recommends that the Brotherhood's demand for $1.00 per day extra pay for instructing new and student operators be denied.

Sec. 5. Rate for Transferring Baggage—The same remarks that appear under Sec. 3 (above) apply to this section.

The panel recommends that the Brotherhood's demand for extra pay for transferring baggage from one bus to another be denied.

Sec. 6. Accident and Health Policy—This demand was voluntarily withdrawn by the Brotherhood.

Art. 26. Discipline and Grievances

This article is not listed as in dispute in the official list of issues presented to the panel by the War Labor Board. However, it appears from a marked copy of the original agreement between the company and the Brotherhood (which marked copy was included among the papers constituting the official file) that revisions of the original agreement had been discussed during the conciliation proceedings, and presumably some form of adjustment had been reached before the case went to the War Labor Board. However, the Brotherhood presented to the panel as a supplementary brief a completely rewritten Art. 26, part of which follows verbatim certain passages in the Santa Fe agreement of Jan. 1, 1943. The chief point of difference between the revised Art. 26 and the original draft as it appears in the existing agreement concerns the setting up of arbitration proceedings prior to final disciplinary action against employees. Much oral testimony was presented at the hearing in regard to this arbitration feature which the Brotherhood advocates but which the company is unwilling to adopt.

While the panel feels that any agreement reached before the conciliator should be retained, it has no information concerning such agreement. The panel concludes that the inclusion of an arbitration clause of standard type cannot possibly adversely affect the company interests and may very well lead to improved employer-employee relations. It is accordingly recommended that the parties be requested to incorporate such a clause in this agreement.

Art. 28. Duration of Agreement

The panel agrees that the effective date of the revised agreement should date from the certification of the case to the National War Labor Board, namely, Oct. 9, 1944. Accordingly, it is recommended that Art. 28 should read:

"The foregoing rates, rules, and regulations shall be in effect Oct. 9, 1944, and shall remain in effect for one year and thereafter, subject to 30 days' written notice by either party to the other."

Signed by Alexander S. Langsdorf, representing the public; G. S. Hamill, representing employers; and Wilbert Bastian, representing labor.

M. DAVIDSON & SONS—Decision of National Board

In re M. DAVIDSON AND SONS (represented by SAN JOAQUIN COUNTY INDUSTRIAL ASSOCIATION) [Stockton, Calif.] *and* INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 1-6 (CIO). Case No. 111-10672-D, July 23, 1945 (made public Aug. 14, 1945).

PREMIUM WAGE RATES—Pay for holidays not worked—Industry-area practice

Employees are not entitled to straight-time pay for holidays not worked since such payment is contrary to industry and area practice. Regional Board's order granting pay for religious holidays not worked is, therefore, vacated.

For other rulings see Index-Digest 140.278 in this or other volumes.

VACATIONS—Standard plan—Prorated vacation

Regional Board's order granting standard one-for-one and two-for-five vacation plan and providing for prorated vacation benefits for years between one and five is modified by removal of proration clause.

For other rulings see Index-Digest 205.323 in this or other volumes.

Majority decision of Board amending directive order of Regional Board X (San Francisco). Public members concurring: Lewis M. Gill and Edwin E. Witte. Employer member concurring: Clair S. Cullenbine and Earl N. Cannon. Labor members dissenting: John Brophy and Raymond T. McCall.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12. 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted the petition filed by the company in the above entitled case and having reviewed the merits of the case, hereby decides the dispute between the parties and orders:

I. The terms and conditions of employment set forth in the Tenth Regional Labor Board's directive order of Feb. 23, 1945, in this case shall govern the relations between the parties, with the following modifications:

A. Holidays

In the absence of industry or area practice in this matter, Par. IA of the said order of Feb. 23, 1945, is hereby vacated.

B. Vacations

The provision of the said order of Feb. 23, 1945, with respect to proration of vacations is vacated. The remainder of Par. IB is affirmed.

II. The terms and conditions of employment set forth in said directive order of Feb. 23, 1945, as herein modified, shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Directive Order of Regional Board X (San Francisco)

Feb. 23, 1945

I. The Regional War Labor Board for the Tenth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942 and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

A. Holidays *

The union's request for pay for holidays not worked is denied except that, if the employer on a regularly scheduled workday closes the operations in observance of the Day of Atonement and New Year's Day of the Jewish Faith or any other special holidays of that faith, the employees shall be entitled to receive straight-time pay for those days.

B. Vacations †

All employees shall be entitled to receive one week's vacation with pay after one year of service with the company and two weeks' vacation with pay after five years' of service with the company, with a year of service defined as 1,500 hours within any 12 consecutive months.

Vacation pay shall be computed by multiplying the number of hours in the regularly scheduled workweek by the straight-time rate of pay but shall in no event be more than forty-eight (48) nor less than forty (40) hours' pay.

Proration shall be as follows: After 2 years—7½ days' vacation, after 3 years—9 days' vacation, and after 4 years—10½ days' vacation.

Employees eligible for vacation whose employment is terminated shall receive vacation pay in accordance with the foregoing eligibility requirements. Pay in lieu of vacation or deferment of vacation leave shall be a

---

* Ed. Note: The Board found that the award of pay for holidays not worked was not supported by industry or area practice. (WLB Press Release B-2196.)

† Ed. Note: The Board's standard practice, contingent on industry and area practice, is to award one week after one year's service and two weeks after five years' service with no prorating for years between. (WLB Press Release B-2196.)

matter of agreement between the parties, with consideration to be given to production exigencies, as a concern of the employer, and to the employee's desires. In all other respects the present vacation provisions shall remain in effect.

C. Duration of Agreement

If the Wage Stabilization Act [25 War Lab. Rep. No. 3, V; WCDS 9] or any of the general regulations, directives, or rules in effect thereunder are altered so as to permit or authorize the making of wage adjustments beyond the limits of present wage stabilization policies, then either party to this contract, on thirty (30) days' written notice to the other, shall have the right to reopen the wage provisions of the contract for revision of wages only.

D. Thirty-Day Reopening for Sick Leave Negotiations

The parties are directed to negotiate further on this issue and report the result of such negotiation to the War Labor Board within thirty (30) days from the date of issuance of this directive order.

E. Effective Date

As agreed to by the parties, the foregoing adjustments shall be effective as of July 1, 1944, and the procedure for making retroactive wage payments shall be in accordance with the resolution of the National War Labor Board dated Apr. 2, 1943 [26 War Lab. Rep. 3].

Nothing in this order shall be construed as constituting approval of any wage payment made in contravention of the Wage Stabilization Act of Oct. 2, 1942, or any of the orders, regulation, or directives issued thereunder.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the Regional War Labor Board.

III. If it is the intention of the company to seek price relief, pursuant to Executive Orders No. 9250 and 9328, as supplemented by the directive of May 12, 1943, the wage increases granted herein shall become effective only upon determination by the Office of Price Administration that the wage increase ordered in this directive order will not require any change in price ceilings, or, if no such determination is made, then upon approval by the Director of Economic Stabilization. The company shall notify the Regional War Labor Board of its intention, and the parties will be promptly notified of the action of the Office of Price Administration or the Director of Economic Stabilization.

As provided in Sec. 802.40 of the "Rules of Organization and Procedures of the National War Labor Board", this order is subject to review by the National War Labor Board at any time on its own motion.

IV. The provisions of this order shall become operative as the order of the National War Labor Board fourteen (14) days after the date of issuance unless within fourteen (14) days either party files a petition for National Board review of the order with the Tenth Regional War Labor Board in the manner prescribed in the "Summary of Procedures".

Either party may petition the Regional Board to make effective immediately, according to its terms, those provisions of the directive order on which review has not been sought, or the parties may mutually agree upon the date when the order, or any part thereof, shall take effect except that where a wage or salary adjustment is made subject to the approval of the Director of Economic Stabilization, the parties may not by their agreement make such adjustment effective prior to the date of such approval. Notwithstanding any other provision of this paragraph, that part of a directive order which continues in effect the terms and conditions of a prior contract which has expired or been otherwise terminated shall not be suspended or stayed by the filing of a petition for review but shall become effective according to its terms unless and until the National Board, upon consideration of a petition for review, otherwise directs.

Either party may, within seven (7) days of the date of issuance of the directive order, file with the Regional Board, in acordance with the attached "Summary of Procedures", a petition for Regional reconsideration. The filing of such a petition shall not, unless the Regional Board otherwise directs, stay or suspend the operation of the order, nor shall it extend the time within which a party may petition for review.

Signed by Thomas Fair Neblett, Arthur C. Miller, and Judge M. Sloss, public members; Ed. Hall, Herbert Wilson, and Wendell Phillips, labor members; and William B. Tyler, Dwight Steele, and R. A. Smardon,

Jr., employer members, subject to dissent on holidays, vacations, duration of agreement, and sick leave, Mr. Smardon also dissenting on effective date.

*Report and Recommendations of the Panel**

PRELIMINARY STATEMENT

Industry and Area

In addition to the employer involved in this case in the Stockton, Calif., vicinity, there are three other employers engaged primarily in wholesale scrap metal operations. These three establishments, Western Junk Company, Gold & Son, and Stockton Junk Company are signatories in all agreements between the employer and the union except the present stipulation agreement of Oct. 27, 1944. † Altogether the four establishments currently employ eight men and normally employ from 8 to 12 men in the contract classifications which are covered by the terms "minimum basic rate, torchmen, and cranemen." Total employment occasionally exceeds the latter figure in accordance with the temporary needs of the employer. Traditionally, the employer certified in this case negotiates the contract that is adopted by the other employers.

A consideration fundamental to two of the issues in this case is the definition of the industry and labor market area. The union at the outset in its presentation advised the panel that it is in negotiation with numerous employers in northern California communities in which it holds agreements covering distributive operations and takes the position that the equities in this case cannot be reasonably ascertained until such time as they have been finally determined for the general warehousing industry. The employer, in reply to this opening testimony, contends that the scrap metal yards in Stockton are a part of the Stockton metal trades industry and that all comparisons should be limited accordingly.

Before proceeding to the specific issues in this case, the panel takes cognizance of certain Tenth Regional War Labor Board actions; matters of public information which bear on the question of the type of industry and the labor market area:

(1) In its approved bracket for the warehousing industry ‡ which is applicable to San Francisco, Stockton, Sacramento, and the intervening area, the Board provides for the following industrial coverage:

"Public warehousing (general and cold storage) and warehousing operations in connection with the distribution at the wholesale level of various commodities, but excluding:

"(a) Storage and warehousing in connection with manufacturing, except where such operations are incidental to a general wholesale operation;

"(b) Retail distribution except for operations which are substantially equivalent to warehousing operations at the wholesale level, the question of fact in a given case to be determined by job description and bargaining history;

"(c) Longshore and stevedore activities;

"(d) Warehousing on construction and repair industries not under the jurisdiction of the Regional Board; and

"(e) governmental operations not under the jurisdiction of the Regional War Labor Board."

As of June 22, 1944, the Board, in adding a new bracket classification, approved coverage for heavy industry such as steel, machinery, and plumbing.

(2) The Board's approved brackets for the metal trades limits § the labor market area to Stockton, Calif., but does not define the industry.

These two bracket determinations are taken into consideration by the panel in its subsequent findings as to industry and labor market area.

PARTIES TO THE DISPUTE

Description of Employer

The employer, M. Davidson, located at 740 North Wilson Way, Stockton, Calif., regularly employs five men covered by this proceeding and is normally engaged in the wholesale supply of scrap metal and bags and new and used materials, including standard water pipe, screw casing, irrigation pipe, valves, fittings, structural iron, steel plates, rails, tanks, corrugated iron and mining machinery. Princi-

* Ed. Note: Only that portion of the panel report relating to holidays and vacations is reproduced.

† Copy in prime file.

‡ WLB Bay Area 79, Jan. 21, 1944.

§ WLB 10, Stockton 35, Oct. 7, 1943.

pal operations at present are concerned with the wholesale supply of scrap metal for the northern California steel industry in the vicinity of Pittsburg, which is approximately 30 miles west of Stockton.

Description of Union

The International Longshoremen's and Warehousemen's Union, Local 1-6, a labor organization affiliated with the Congress of Industrial Organizations, has agreements with upwards of 400 employers engaged in all or in part in distributive operations in the area inclusive of San Francisco, Oakland, Crocket, Petaluma, Redwood City, and Stockton, Calif. Most of these agreements approximate the uniformity of a master agreement which covers about 225 San Francisco employers and the large majority of the union's membership of approximately 4,000, who are engaged primarily in warehousing activities.

HISTORY OF BARGAINING RELATIONS

The employer voluntarily recognized ILWU, Local 1-27 (CIO), of Sacramento, Calif., in the first written agreement of Nov. 4, 1940,* and such recognition has been a continuing contract provision since that date. On June 1, 1944, the Conciliation Service dum agreement, jurisdiction was transferred to Local 1-6 and provision was made for a minimum term of one year and for voluntary 30-day termination of modification notices thereafter by either party. On May 1, 1944, extensive revisions in the contract as proposed by the union were rejected by the employer and, on June 1, 1944, the Conciliation Service entered the case. Of 18 contract sections, three, relating to bulletin board notices, discharges and shop stewards, were agreed upon during conciliation. Fifteen remaining contract sections† as issues in dispute were certified to the War Labor Board by the Conciliation Service on Sept. 6, 1944. Subsequently, the parties resumed negotiations and, on Sept. 26, 1944, they requested and were granted postponement of hearing by the Tenth Regional Board to continue negotiations for the purpose of reducing the number of issues. By stipulation‡ on Oct. 27, 1944, a new contract of 23 sections was agreed upon and the issues were reduced to matters within the scope of four contract sections and one additional issue as follows:

1. Contract Sec. 8—Holidays (Pay for holidays not worked);
2. Contract Sec. 15—Hours (Late-shift premium wages);
3. Contract Sec. 16—Vacations (All provisions);
4. Contract Sec. 23—Duration of agreement (Reopening for wage rate negotiations in event of a change in National Wage Stabilization policy); and
5. Contract Sec. 23—Sickness and accident leave.

THE PRESENT DISPUTE

During the Nov. 2, 1944, hearing, the stipulated issues were reduced to four in number when the union withdrew its demand for late-shift premium wages under Contract Sec. 15, and modified the scope of other issues in accordance with the detailed statements covering the proposals and positions of the parties in this report. Wherever the term "stipulation" is used in this report, reference is made to the stipulation of Oct. 27, 1944, covering the new contract and the disputed issues. The parties agree that the effective date of any finally determined adjustments shall be July 1, 1944.

DISCUSSION OF ISSUES

1. Holidays (Contract Sec. 8)

Union Proposal and Position

The union proposes payment of straight-time wages for six of the nine agreed upon holidays when no work is performed, provided that an employee shall be paid for such holidays only when no work has been scheduled and when the employee has worked the scheduled day before and after the particular holiday. The union argues that such payments are becoming increasingly common in industry in general and are permissible within the limits of the national wage stabilization program. In support of this position, the union cites the Tenth Regional War Labor Board's approval and the National Board's affirmation of an arbitration award covering the cleaning and dyeing industry in San Francisco.†† The union states that some of its agreements provide for such payments and that its proposal in this case is reasonable.

The union contends, further in support of its proposal, that the employer traditionally observes five or more religious holidays for which the employees receive no pay, and that for

* Employer Exhibit A.

† Conciliatory Service Synopsis, Aug. 28, 1944.

‡ Copy in prime file.

†† WLB 10, Case No. 10-12044.

the employees this practice results in an unreasonable loss of income when the total number of holidays actually observed becomes excessive.

Employer's Proposal and Position

The employer opposes payment for any holiday on which no work is performed and argues that no such practice is common in the Stockton, Calif., vicinity generally and in the metal trades industry in particular. The employer contends that payment for holidays not worked can be properly ordered only where such is the practice in the industry and in the area and cites the decision of the National War Labor Board in the C. M. Grey Company, Case No. 111-3153-D, June 23, 1944—17 War Lab. Rep. 105, in which the Second Regional Board was directed to reconsider on the basis of area and industry practice its award of pay for six holidays when work is not scheduled.

In addition, the employer cites Case No. 111-1998, Morris P. Kirk and Sons, Inc., Los Angeles, in which the Tenth Regional Board denied payment for holidays not worked. The employer contends that closings for holidays outside of the agreement are traditional and therefore do not constitute a reasonable basis for granting the union's proposal. The employer contends that such closings do not normally exceed three per year.

Findings and Recommendations

The panel recommends that the parties be ordered to incorporate in their agreement in their own language terms that will provide as follows:

Effective as of July 1, 1944 (the agreed upon retroactive date), the employer shall identify for the union all holidays other than those agreed upon that are to be observed during the contract year. An equivalent number of the agreed upon holidays up to a maximum of six shall be compensated at the straight-time rate when no work is performed, provided the employee works the scheduled day before and after the scheduled agreed upon holiday.

The panel observes that the four wholesale scrap metal yards in Stockton together comprise such a small operation that, for the purpose of examining certain of the questions of equity involved in this case, they must be grouped with the most comparable operations. The preliminary statement in this report introduces the question of appropriate industry and area comparisons and refers to two Tenth Regional War Labor Board industry brackets applicable to the Stockton vicinity—the general warehousing bracket and the metal trades bracket.

The panel finds that the employers' operations are primarily distributive and come within the Board's definition of the warehousing industry in labor market area inclusive of the San Francisco Bay area, Stockton, Sacramento, and the intervening area.* In reaching this conclusion, the panel has considered the argument of the employer that comparisons should be limited to the metal trades industry. The panel finds that although the Board's bracket† for the Stockton metal trades industry does not define the industries covered, the usual use of the term applies to operations that are primarily of a manufacturing nature.

To the extent that industry practice is controlling on this issue and in accordance with the National Board's recent decision in the C. M. Grey Company case cited by the employer, the panel finds as follows:

A minority of the union's agreements provide for pay for holidays not worked, and it is a reasonable assumption that prevailing practice in the warehousing industry in the labor market area is reflected in the master agreements of the union in this case and General Warehousemen's Union, Local 860 (AFL). These contracts, largely covering the warehousing industry in San Francisco, make no provision for pay for holidays not worked. On the other hand, the same master agreements providing for eight and eight and one-half holidays respectively as compared with nine holidays agreed upon in this case indicate the limitation that the industry places on unpaid holidays.

While there is no question as to the right of the employer to observe holidays of his own choosing, in the judgment of the panel the loss of income suffered by the employees when an excessive number of holidays are observed is inequitable. The specific terms of the panel's recommendation would limit the number of paid holidays to six in accordance with the union's proposal, would limit the number of unpaid holidays to nine in accordance with approximate industry practice, and would provide that pay-

* RWLB 10, Bracket 79, Bay Area.
† RWLB 10, Stockton 35, Oct. 7, 1943.

ment is made for agreed upon holidays rather than for religious and other holidays selected by the employer alone. The recommended requirement that the employer identify the extra holidays at the beginning of the contract term is intended to preclude future disagreement as to the number of such holidays, a disputed matter in this case.

In basing its recommendation largely on industry practice, the panel takes into account that only a very small segment of the warehousing industry is involved in this case and that the concepts of industry and area practice as criteria to be used in applying the National War Labor Board's policies logically require that stability in the industry will be the first consideration and stability in the area the ultimate controlling factor. Accordingly, if the Tenth Regional War Labor Board, in the immediate future, in the warehousing industry orders or authorizes more liberal payment for holidays than is recommended in this case, the panel further recommends that such payments be extended to cover the employees involved in this proceeding.

2. Vacations (Contract Sec. 16)

Preliminary Discussion

During the hearing, the panel requested the parties to submit factual information which would reflect the most frequent and average workweek for the past year. On Nov. 7, 1944, the employer's representative, after conferring with the union's business agent, submitted to the panel a Nov. 6 report of M. Davidson as an agreed upon statement of the parties:

"In answer to your inquiry our average working week is 44 hours—40 hours straight time and 4 hours overtime." *

The testimony of both parties during the hearing reveals that all employees who qualify for vacation under the prior contract terms have been regularly employed for five years or more, and if a lengthened vacation period as proposed by the union is to be ordered in this case, any length of service eligibility requirement up to five years will have the same immediate practical effect. The prior contract provision is as follows:

"Any man who, on June 15, has been in the service of his employer for a period of one year or more shall be eligible to one week's vacation, 40 hours at straight-time pay at his particular classification of employment. Fifteen hundred hours' service with an employer shall constitute a year's employment.

"Due to variation of business in this industry and the men on the job not having replacement it shall be optional with the employers as to when the men may take their vacations so as not to impede or handicap the employer's production. Men can, if they wish, work during their vacation period and receive their vacation pay along with their actual earnings for the time put in. In no way shall it be understood that men shall demand their vacation in a five consecutive day period without consent of the employer. The employer, on the other hand, shall grant every man eligible for his vacation this compensation under the above stated condition before the employee's second contracted year of employment."

Union Proposal and Position

The union proposes the following contract provision:

"Every employee who has worked for the employer for one (1) year shall receive one week's vacation of six (6) days with full pay. Every employee who has worked for the employer two (2) years or more shall receive two (2) weeks' vacation of twelve days with full pay. For purposes of this section, the workyear shall be defined as fifteen hundred (1,500) hours within any period of twelve (12) consecutive months.

"An employee who works the minimum of 1,500 hours within 12 months, thus becoming eligible for a vacation within the meaning of this paragraph but whose employment is terminated prior to taking his vacation, shall be entitled to pay in lieu thereof provided, however, an employee who does not work the minimum of 1,500 hours within said period and whose employment is terminated shall be entitled to no vacation and shall be entitled to no pay in lieu thereof."

During the hearing, the union representative stated that, in its proposal, the union seeks to secure the following adjustments:

(1) A change in the basic vacation plan of one week after one year to a plan providing for one week after one year and two weeks after two years.

* Copy in prime file.

(2) Vacation pay at the straight-time rate in accordance with the number of hours in the normal or most frequent workweek.

(2) Simplification of the basic eligibility standards in accordance with the agreed upon service requirement of 1,500 hours within 12 consecutive months.

With respect to increasing the amount of vacation (Item 1 above), the union argues that its contracts commonly provide for two weeks' vacation after two years of service and cites the National War Labor Board majority opinion in the Fulton Iron Works Company case, 15 War Lab. Rep. 230, as being a statement of policy under which the proposal is justified.

With respect to computation of vacation pay (Item 2 above), the union contends that its plan is justifiable on the basis of the Mar. 2, 1944, resolution of the Tenth Regional War Labor Board [15 War Lab. Rep. LXV; WCDS 376] in which employers throughout the Region were authorized to increase vacation pay in accordance with increases in the basic workweek ordered by a governmental agency.

With respect to simplification of the eligibility standards (Item 3 above), the union argues that there is no need for a qualifying date as proposed by the employer and that length of service alone is the only reasonable criterion to be used in determining eligibility for vacation.

Employer Proposal and Position

The employer proposes the following provision:

"Every employee who, on the first day of June 1945 and on like date in each year thereafter during the life of this agreement, shall have been in the service of his employer for a period of one year or more shall be entitled to an annual vacation of one week, forty (40) hours with pay at straight time.

"For the purpose of this paragraph, fifteen hundred (1,500) hours of straight-time work within the period of twelve (12) months, June 1st to June 1st shall constitute one year of service with the employer. An employee who works the minimum of fifteen hundred (1,500) hours straight-time hours within the period June 1st to June 1st thus becoming eligible for a vacation within the meaning of this paragraph, but whose employment is terminated prior to taking his vacation, shall be entitled to pay in lieu thereof, provided, however, an employee who does not work the minimum of fifteen hundred (1,500) straight-time hours within said period and whose employment is terminated shall be entitled to no vacation and shall be entitled to no pay in lieu thereof.

"The employer shall make every effort to grant vacation periods between June 1st and Oct 31; however, due to variation of business in this industry and the scarcity of men for replacement, it shall be optional with the employers as to when the men may take their vacations so as not to impede or handicap the employer's production. Men may, if they wish, work during their vacation period and receive their vacation pay along with their actual earnings for the time put in. In no way shall it be understood that men shall demand their vacation in a five consecutive day period without consent of the employer. The employer, on the other hand, shall grant every man eligible for his vacation this compensation under the above stated conditions before the employee's second year of employment."

The employer contends that any change in the basic vacation provisions of the prior contract that results in increasing the amount of vacation or vacation pay is contrary to wage stabilization principles.

With respect to the two-week vacation as proposed by the union, the employer contends that, in the Stockton vicinity in general and in the metal trades industry in particular, there is no common industrial practice of providing for more than one week, regardless of length of service.

The employer argues that the workweek varies between 40 and 48 hours and that the only regularly scheduled or normal workweek is the 40-hour week of the prior contract. It is the position of the employer that any increase in the average workweek since the prior contract was negotiated is properly compensated by overtime payments and does not provide a reasonable basis for increasing the amount of vacation pay.

Panel Findings and Recommendations

The panel recommends that the parties be ordered to incorporate in their agreement in their own language a vacation plan in which the following standards govern:

(1) Effective July 1, 1944, employees shall qualify for one week's vacation after one year of service and two weeks vacation after two years of service with a year of service defined as 1,500 hours within any 12 consecutive months.

(2) The vacation week shall be defined as equivalent to the highest average number of hours worked by the employee in a majority of the weeks during the qualifying year with such number of hours compensated at the employee's straight-time rate, provided that not more than 48 hours or less than 40 hours shall be thus compensated during any one week of vacation and that the total number of vacation hours with pay shall not exceed 96 during any year for any employee.

(3) Employees whose employment is terminated shall receive vacation pay in accordance with the foregoing eligibility requirements. Pay in lieu of vacation or deferment of vacation leave shall be a matter of agreement between the parties, with consideration to be given to production exigencies as a concern of the employer and to the employee's desires.

In making the above recommendation, the panel has considered all the arguments of the parties and has examined the National War Labor Board's guiding principles concerning the liberalization of vacation plans as summarized in the "Summaries of Significant Board Actions" for June and July 1944.

As in Issue No. 1 above, the panel finds that comparison may be properly made with the warehousing industry in the labor market area defined by the Tenth Regional War Labor Board,* and that the master agreements of the union involved and General Warehousemen's Union, Local 860 (AFL), reflect prevailing industry practice. These contracts provide for two weeks' vacation after two years of service as proposed by the union in this case.

In the Fulton Iron Works Company case, 15 War Lab. Rep. 230, cited in the "Summaries" as being a policy making decision and cited by the union in this case, the opinion of the Board makes it clear that, while regional boards may in their discretion order the liberalization of vacation plans to provide for two weeks after five years of service without regard to the practice in the industry or area, more liberal or less liberal plans may be properly ordered on the basis of prevailing practice in the industry or area.

On the question of computation of vacation pay, the Tenth Regional War Labor Board's resolution of Mar. 2, 1944, cited by the union is not precisely applicable inasmuch as the actual workweek in this case is variable without regard to the directives of other government agencies. On the other hand, the National Board in its instructions to regional boardss† as instructions to regional boards† as Lab. Rep. XXXII; WCDS 376], stated:

"Where a contract provides for a vacation of one week or two weeks and a new or longer workweek has been adopted since execution of the contract, vacation pay may be paid, without the approval of the Board, on the basis of current or lengthened workweek. This vacation is to be limited to the straight-time pay for the number of hours in the new and lengthened workweek and is not to include overtime."

The panel finds that the general proposition that the vacation week should reflect the number of hours in the normal workweek has been heavily supported in a series of National Board decisions as cited in the Board's "Summaries of Significant Actions" for June and July 1944 (McKay Company, Case 2481-CS-D [6 War Lab. Rep. 380], Feb. 6, 1943; Flintkote Company, Case 111-2576-10 [9 War Lab. Rep. 830], Dec. 7, 1943; American Radiator and Standard Sanitary Corporation, Case 111-2637-D [13 War Lab. Rep. 308], Jan. 6, 1944; St. Joe Machines, Inc., Case, 111-3469-D, Feb. 22, 1944).

In recommending that eligibility for vacation be determined on the basis of length of service alone except that the parties may by agreement work out the details of the practical administration of the plan, the panel has recognized that qualifying dates in vacation plans, if literally applied, may result in gross inequities as between employees in the same establishment.

[ED. NOTE: Issue 3, duration of agreement, discussed in the panel report at this point, is omitted.]

Signed by Jackson W. Hume, representing the public; R. E. Fraser, representing employers; and Sandra Martin, representing labor.

* RWLB X, Bracket 70, Bay Area.

† Advance Release B-876.

GOODYEAR AIRCRAFT CO.—

Decision of National Board

In re GOODYEAR AIRCRAFT CORPORATION [Akron, Ohio] *and* PATTERNMAKERS LEAGUE OF NORTH AMERICA (AFL). Case No. 111-14706-D, July 10, 1945 (made public Aug. 1, 1945).

WAGES—GOING WAGE RATES—Increases to minimum brackets

Patternmakers are entitled to increase in wage rate to bring their rate up to minimum of revised bracket established by Regional Board, and employees in two interrelated job classifications are entitled to corresponding rate increases so that proper intra-plant differentials may be maintained.

For other rulings see Index-Digest 250.100 and 265.135 in this or other volumes.

WAGE ADJUSTMENTS—Wage reopening clause

Union is entitled to provision in contract entitling it to reopen contract on ten days' notice in event of change in national wage policy, despite company's objections that such clause would work hardship on it since it is working on fixed-price war contracts.

For other rulings see Index-Digest 225.780 in this or other volumes.

Majority decision of Board approving recommendations of panel. Public members concurring: Lewis M. Gill and Jesse Freidin. Labor members concurring: Paul Chipman and Neil Brant. Employer members dissenting on Pars. 3 and 5: Walter Knauss and Earl Cannon.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby orders that the following terms and conditions of employment shall govern the relations between the parties:

1. The agreement of the parties with regard to an apprenticeship system is approved.

2. The parties shall adopt the following rate ranges:

Job Title		Rate Range
Model Maker	A	$1.57-$1.70
	B	
	C	
Pattern Maker (Wood)	A	1.37- 1.50
	B	
	C	
Pattern Maker (Plastic)	A	1.27- 1.40
	B	
	C	

The rate for leader shall be ten cents (10¢) per hour above the "A" classification.

3. Par. 2 above shall be retroactive to Feb. 3, 1945.

4. The procedure to be followed in making the retroactive payment to those employees who have either quit or been discharged shall be in accordance with the Board's resolution dated Apr. 2, 1943 [26 War Lab. Rep. 3].

5. The parties shall adopt the following provision:

"Either party may, by giving to the other party ten (10) days' written notice, reopen the question of wages provided that in the meantime the National War Labor Board or other governmental agency having jurisdiction has put into effect a wage policy substantially different from the one governing the establishment of wage rates provided for in this agreement."

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Report and Recommendations of the National Airframe Panel

BACKGROUND

The company manufactures and assembles military aircraft at its plant in Akron, Ohio. The union was certified in December 1942 as the collective bargaining agent for all pattern makers employed by the company. The present dispute arose out of the negotiations of a second collective bargaining agreement, the first having expired on Feb. 5, 1945.

The parties have agreed to establish an apprenticeship system. They are in dispute over wages, retroactivity, and a provision for the reopening of the wage agreement.

APPRENTICESHIP SYSTEM

The parties have agreed to establish the following apprenticeship schedule:

"1. Five (5) years shall constitute an apprenticeship to pattern making. It shall be divided into ten (10) periods of one thousand (1,000) hours each.

"2. There shall not be more than one (1) apprentice for the shop, (1) additional apprentice for each eight (8) journeymen patternmakers; except if the company cannot secure sufficient experienced men to maintain operation efficiently, more apprentices may be employed at the discretion of the company.

"3. Apprentices shall be paid as follows:

"45%	of Journeymen's Minimum	Rate per Hour	1st 1,000 Hours
50%	of Journeymen's Minimum	Rate per Hour	2nd 1,000 Hours
55%	of Journeymen's Minimum	Rate per Hour	3rd 1,000 Hours
60%	of Journeymen's Minimum	Rate per Hour	4th 1,000 Hours
65%	of Journeymen's Minimum	Rate per Hour	5th 1,000 Hours
70%	of Journeymen's Minimum	Rate per Hour	6th 1,000 Hours
75%	of Journeymen's Minimum	Rate per Hour	7th 1,000 Hours
80%	of Journeymen's Minimum	Rate per Hour	8th 1,000 Hours
85%	of Journeymen's Minimum	Rate per Hour	9th 1,000 Hours
90%	of Journeymen's Minimum	Rate per Hour	10th 1,000 Hours

"At the end of the tenth period apprentices shall receive journeymen's minimum rate of the classification, except that the company reserves the right to stop the rate progression on any apprentice where lack of ability or efficiency warrants it. The employee, if not satisfied, will have the right to present his case through the grievance procedure."

This schedule is also included in agreements recently negotiated by the union with four Ohio companies, including the Wright Aeronautical Corporation in Lockland, Ohio.

Panel's Recommendation

The panel unanimously recommends approval of this schedule. Such apprenticeship systems have long been an established practice in the various skilled trades, and no further comment is necessary.

WAGES

The company's present rates for the classifications involved are compared below with the rates proposed by the union, the approvable rate ranges for the area, and the SCAI rates.

Job Title		No. Empl.	Present Rates	Proposed Rates	Approvable Rate Ranges	SCAI Rates
Model Maker	A	11	$1.55-$1.65	$1.57-$1.70		$1.25-$1.45
	B	1	1.40- 1.50			1.10- 1.25
	C		1.25- 1.35			.95- 1.05
Pattern Maker (Wood)	A	3	1.35- 1.45	1.37- 1.50	$1.37-$1.50	1.25- 1.45
	B		1.20- 1.30			1.10- 1.25
	C		1.05- 1.15			.95- 1.05
Pattern Maker (Plastic)	A	4	1.20- 1.30	1.27- 1.40		1.20- 1.35
	B		1.05- 1.15			.95- 1.05
	C		.90- 1.00			.85- .95
Total		19				

The present rate range for pattern maker (wood) was directed by the National Board on July 21, 1944 (Case No. 111-6389-D) [17 War Lab. Rep. 380]). This rate range was based upon the approvable rate range then in effect in the Akron area. The rate ranges for model maker and pattern maker (plastic) were based upon the rate range for pattern maker (wood). On Oct. 18, 1944, the Fifth Regional War Labor Board revised the approvable rate range for pattern maker (wood) as indicated above, and the union requested the Board to grant the new approvable rate range. The union also requested the Board to grant an equivalent increase for the model maker classification, so that the present differential will not be disturbed.

In the case of the classification of pattern maker (plastic), the union contended that the original differential established by the Board in Case No. 111-6389-D was too wide. The union proposed, therefore, that the minimum

and maximum rate for pattern maker (plastic) be fixed at a point 10 cents per hour lower than the corresponding rate for pattern maker (wood) A.

The company opposed the union's proposals, contending that the present rates are sufficient.

Panel's Recommendation

The panel unanimously recommends that the union's proposals be granted. The union is obviously entitled to a rate range for pattern maker (wood) corresponding to the approvable rate range for that classification which has been established in the Akron area by the Regional Board. It is equally clear that the rate range for model maker must be increased correspondingly in order to maintain the existing differential. As will be observed from the table above, the differential between the classifications of pattern maker (wood) and pattern maker (plastic) proposed by the union is wider than that which exists between those classifications under the SCAI schedule. The panel is of the opinion that the union's proposal is reasonable and should be granted. With respect to the application of the new rate ranges, the panel unanimously recommends that the employees involved shall be moved up to the minima of the new rate ranges and that steps be immediately taken to make such in-grade adjustments as may be necessary to continue the orderly development of the wage schedule.

RETROACTIVITY

The union requested that all wage adjustments be made retroactive to Feb. 5, 1945, the expiration date of the previous collective bargaining agreement. The company opposed any retroactivity.

Panel's Recommendation

In accordance with the Board's well established policy, a majority of the panel, industry members dissenting, recommends that the union's request be granted.

WAGE REOPENING PROVISION

The union requested inclusion in the collective bargaining agreement of a provision which will permit the issue of wages to be reopened during the life of the agreement in the event that there is any change in the present wage stabilization policy. The union stated that such a provision was customarily included in its contracts with other companies.

The company objected to the inclusion of such a provision in the collective bargaining agreement. It stated its position as follows:

"* * * This present contract is in essence a one-year contract, a fact which prevents such employees from binding themselves to work over long periods of time at a rate which may become obsolete and out of line with costs of living. One value that an employer gets out of a labor contract with his employees is that he can fairly estimate his labor costs in making of business commitments. Since he cannot make his own contract prices subject to such fluctuations, such a clause works a hardship upon the employer who is attempting to handle war contracts at less than a normal peacetime profit."

Panel's Recommendation

A majority of the panel, industry members dissenting, recommends the adoption of the following provision:

"Either party may, by giving to the other party ten (10) days' written notice, reopen the question of wages, provided that in the meantime the National War Labor Board or other governmental agency having jurisdiction has put into effect a wage policy substantially different from the one governing the establishment of wage rates provided for in this agreement."

The Board has frequently ordered the inclusion of this provision in collective bargaining agreements. The majority believes that the provision affords to both parties a protection which is rightfully theirs, that is, the right to request a reconsideration of the wage rates being paid in the light of changes brought about by a substantial alteration of the controlling governmental policy.

Signed by Benjamin Aaron and Philip S. Brayton, public member; Garry Cotton and Andrew Leiper, labor members; and R. Randall Irwin and Paul S. Chalfant, employer members, subject to dissent on retroactivity and wage reopening clause.

DOUGLAS AIRCRAFT CO., INC.—

Decision of National Board

In re DOUGLAS AIRCRAFT COMPANY, INCORPORATED [Santa Monica and Long Beach, Calif.] *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B-11 (AFL). Cases No. 111-14601-JB and 111-14602-JB, July 24, 1945 (made public Aug. 4, 1945).

WAGE ADJUSTMENTS—Effective date of agreed upon clause

"Hours-of-work" clause which had been agreed upon by parties in October 1944 but was not submitted by company on Form 10 until February 1945 should be made effective as of date shortly after date of agreement, since employer should not be permitted to gain by his delay in submitting Form 10 and awarded date is fair under all circumstances of case.

For other rulings see Index-Digest 225.940 and 225.331 in this or other volumes.

PREMIUM WAGE RATES—Sixth-day premium—Holiday within workweek

Under contract requiring company to pay time and one-half for sixth day of workweek, each day of the first five on which the company fails to make eight hours of work available being counted as a day worked, employer is not obligated to pay time and one-half for sixth day when one of the first five is a holiday, which, in accordance with contract, is not worked and is paid for at straight time.

For other rulings see Index-Digest 140.601 in this or other volumes.

Majority decision of Board affirming recommendations of National Airframe Panel. Public members concurring: Lewis M. Gill and Jesse Freidin. Labor members dissenting on Par. 1: James A. Brownlow and Carl J. Shipley. Employer members dissenting on Par. 2: Earl Cannon and Charles Roberts.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby decides the dispute between the parties and orders that the following terms and conditions shall govern the relations between the parties:

1. The "40-hour clause" agreed upon by the parties shall not be interpreted to require the payment of time and one-half for work performed on the sixth day of the workweek when one of the first five days of the week was a holiday on which, in accordance with the parties' agreement, no work was performed.

2. The agreed upon "40-hour clause" shall be made effective as of Nov. 1, 1944.

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Report and Recommendations of the National Airframe Panel

June 26, 1944

HOURS OF WORK

Background

This dispute involves the Santa Monica and Long Beach, Calif., plants of the Douglas Aircraft Company, Inc., and Local B-11 of the International Brotherhood of Electrical Workers (AFL). The union was certified by the National Labor Relations Board as the collective bargaining agent for the electrical maintenance workers at the Long Beach plant on Feb. 18, 1944, and at the Santa Monica plant on Apr. 24, 1944. There are approximately 260 employees represented by this union at the two plants.

Following the National Labor Relations Board elections, the parties commenced negotiations for their first collective bargaining agreements. In September 1944 several issues which were in dispute were certified to the National War Labor Board in Cases No. 111-11182-D and No. 111-1183-D [25 War Lab. Rep. 229, 26 War Lab. Rep. No. 4]. Those cases are distinct from the instant cases and do not involve the same issues.

The parties had, during their negotiations, reached agreement on several matters which were incorporated in a temporary agreement dated Oct. 14, 1944. In addition, there were issues upon which agreement was reached but which were not incorporated in the temporary agreement. Included

among these was a provision referred to by the parties and hereinafter referred to as the "40-hour clause." This provided:

"Whenever the Company fails to make forty (40) hours of work available to a full-time regular employee during the first five (5) days of the workweek (third shift—thirty-two and one-half (32½) hours), then each such employee shall be paid time and one-half for work done on the sixth day worked in the workweek, it being agreed that in computing the sixth day worked in the workweek each day of the first five (5) days of the workweek on which the Company fails to make eight (8) hours (third shift—six and one-half (6½) hours) of work available shall be counted as a day worked."

A dispute has arisen between the parties both as to the interpretation of the "40-hour clause" and the effective date. On Mar. 9, 1945, the parties signed a stipulation before a United States commissioner of conciliation to submit the dispute on briefs to the National War Labor Board. The issues as listed in the stipulation are:

"1. Interpretation of Sec. 4, Art. IX—'Hours' of the previously negotiated agreement.

"2. Effective date of the negotiated agreement between the parties."

The case was certified to the Board by the Secretary of Labor on Mar. 15, 1945. The parties have submitted briefs and reply briefs.

Union's Position

According to the union's briefs, the parties had agreed during negotiations to certain provisions which fall into two groups: (1) Those that required the approval of the National War Labor Board and (2) those that did not require Board approval. On Sept. 16, 1944, the union filed a petition with the Tenth Regional War Labor Board for an interim directive order which would direct the company to place into effect, pending a final decision on the dispute items, those provisions upon which agreement had been reached. This petition was withdrawn when the parties agreed:

(1) To make effective all those provisions which did not need approval,

(2) To submit a Form 10 to the Tenth Regional War Labor Board covering those provisions upon which agreement had been reached and which needed approval, and

(3) To submit the disputed items to the War Labor Board.

No Form 10 requesting approval of the "40-hour clause" has been filed. It is the union's position that the company delayed in preparing a Form 10 and not until Feb. 16, 1945, was a Form 10 submitted to the union for approval, and this contained a proviso "that it would be effective on the date of the application." The union stated that it refused to sign the Form 10 because it would have meant waiving its claim for time and one-half for the Saturday following Christmas.

The union argued that the parties had never intended that there be three effective dates, one for the agreed upon provisions that needed no approval, one for the agreed upon provisions that needed approval, and one for the disputed issues. The union contends that all of the provisions should be effective as of Sept. 22, 1944, which was the effective date established by the Regional War Labor Board for the nine disputed items.

The "40-hour clause" and other provisions which required approval were not included in the interim agreement signed on Oct. 14, 1944. The union states that these provisions were omitted in order to avoid the confusion which would result if the provisions appeared in the agreement but could not actually be placed in effect.

Sec. (9) of Art. XII of the interim agreement provides as follows:

"In the event any provision of this agreement requires or contemplates a wage adjustment within the meaning of Executive Order 9250 [4 War Lab. Rep. VIII; WCDS 21], such provision shall not be binding upon the parties hereto nor shall it become effective until the approval of the appropriate government agency is obtained or until a statement in writing is obtained from the appropriate government agency that no such approval is necessary."

The union argued that the "40-hour clause" is not a wage adjustment within the meaning of Executive Order No. 9250 and is, therefore, not covered by Sec. (9) of Art. XII.

To substantiate its contention that the company delayed in submitting a Form 10, the union introduced as an exhibit a letter from the union to the company dated Oct 25, 1944, in which the union called to the company's attention the fact that "no gesture has yet been made to originate

the appropriate request so that approval to these agreed to provisions might be channeled for action leading to a conclusion." The union expressed a willingness in the letter to prepare the necessary forms. If the company wished to prepare them, the union urged that it do so "at once lest we find ourselves in the undesirable position of having these items drag long after all others have been settled. * * *"

Another union exhibit was a letter dated Oct. 30, 1944, from the company to the union in which the company advised the union that it was engaged in the preparation of a Form 10 and that it would notify the union upon its completion. The union states that this letter discloses that the union was led to believe that the necessary papers were about ready for filing.

In brief, it is the union's position that [the] "40-hour clause" agreed upon in July 1944, was not submitted to the War Labor Board for approval because of the delay on the company's part and should be made effective as of Sept. 22, 1944, the effective date ordered by the Regional Board for the items which were in dispute.

With respect to the issue of the interpretation of the "40-hour clause" the union contends that the language of the provision requires the payment of time and one-half for the work performed on Saturday following Christmas which fell on Monday. The union refers to Question 18 in Official Interpretations (No. 2) of the Secretary of Labor which indicates that a holiday falling within the scheduled workweek must be counted as a day worked for the purpose of computing the seventh day worked and "should" be counted for the purpose of computing the sixth day "unless the collective bargaining contract specifies otherwise."

Company's Position

The company's position is that the correct interpretation of the "40-hour clause" does not require the payment of time and one-half for work performed on the Saturday following Christmas. The company argues that it did not "fail to make 40 hours of work available during the first five days of the workweek" as the phrase is used in the "40-hour clause." According to the company, the word "fails" indicates that the company "must be found wanting with respect to some duty which is owed" in order for the provision to be applicable.

According to the company, no duty was owed to the employees to provide 40 hours of work during the week in which Christmas fell on Monday since the company was required by another agreed upon provision to furnish less than 40 hours, that the company was required by an agreement with the union to grant Christmas as a holiday. The company states that "to adopt the union construction would require the company to violate the holiday provision by refusing to grant time off or, in the alternative, be charged with failure to make work available."

With respect to the question of the effective date, it is the company's position that the "40-hour clause" was not in effect on Christmas 1944. The company's arguments concerning the effective date may be summarized in brief as follows:

1. There is in effect at the present time the agreement which the parties signed on Oct. 14, 1944. The provisions of that agreement now govern the relations between the parties. No "40-hour clause" is contained in that agreement, although there is a provision that time and one-half will be paid for time worked over 8 hours per day and 40 hours in any one workweek (Art. IX—Hours).

2. Even if the "40-hour clause" had been included in the agreement on Oct. 14, 1944, it would not have been effective on Christmas 1944, since Art. XII, Sec. (9), provides that if any provision in the agreement requires or contemplates a wage adjustment within the meaning of Executive Order 9250, such provision "shall not be binding upon the parties hereto nor shall it become effective until the approval of the appropriate government agency is obtained or until a statement in writing is obtained from the appropriate government agency that no such approval is necessary."

3. The union was well aware that the '40-hour clause" was to be made effective on the date of its approval as evidenced by a letter to the union's business manager from the union counsel, dated Dec. 21, 1944, which stated that the "40-hour clause" required War Labor Board approval before it could be made effective.

The company suggests that the panel could solve this matter by applying the rule which the Board has on occasions adopted of recommending the date of certification, which in this case is Mar. 15, 1945. The company

admits that such a date would be of little satisfaction to the union and would be contrary to the parties' own agreement that the contract of Oct. 14, 1944, should remain in effect until the issuance of the Board's final directive.

With respect to the delays with which the company has been charged by the union, the company states that perhaps it "should have been more diligent in preparing and processing the National War Labor Board Form 10's covering these points." But the company states: "There were many problems involved in this, a variety of clauses were involved, and the company was hopeful that a single form for all unions at each of its six main plants would suffice. In any event, this activity took more time than was anticipated."

DISCUSSION AND RECOMMENDATIONS

Christmas 1944 fell on a Monday. In accordance with the provisions of the agreement between the parties, no work was performed on that day. This agreement, which had been approved by the Board on Oct. 18, 1944, provided as follows:

"The Company shall grant the following holidays, with straight-time pay: Christmas, New Year's, Fourth of July, and Labor Day, provided, however, that such holidays shall not be granted, if the Company is requested or directed by the War Production Board, the Army Air Forces, the Navy Department, or other government agency having jurisdiction, to keep the plant in operation on the holiday; and provided further that, if the Company is so requested or directed to keep the plant in operation, any absent employees who are not excused by the Company shall receive no pay for such holiday. This shall not apply to those maintenance or custodial employees whose work is necessary on such days in order to keep the plant in operation. Such necessary maintenance or custodial employees shall, however, receive time and one-half for all such holidays worked; where such holiday worked is the seventh consecutive day worked in the workweek, doubletime shall be paid."

For work performed on the Saturday following Christmas, the company paid straight time only. The union contends that time and one-half should have been paid instead of straight time. That is the fundamental question which is presented to the Airframe Panel for a recommendation. The question raises two points: (1) Whether the union's contention is correct that the "40-hour clause" requires premium payment on a Saturday following a holiday on which no work is performed and (2) whether the Board should direct the parties to make the provision retroactive to a date prior to Christmas 1944.

The panel majority, with the labor members dissenting, does not interpret the "40-hour clause" to require the payment of time and one-half for work performed on the sixth day of the workweek when one of the first five days of the week was a holiday on which, in accordance with the parties' own agreement, no work was performed. The "40-hour clause" specifies that the company shall pay time and one-half for the sixth day of the workweek whenever the company "fails to make 40 hours of work available to a full-time regular employee during the first five days of the workweek." The majority concludes that the fact that the company did not schedule any work on Christmas day was not a failure to make work available within the meaning of the "40-hour clause." The company could not make work available on Christmas without violating the holiday provision which had been agreed upon with the union.

Where the company had no obligation to provide work on the holiday, but on the contrary was bound by a contractual provision to grant the holiday with straight-time pay, it cannot be said that the company failed to provide work within the meaning of the agreed to provision. The panel majority accordingly recommends that the company's interpretation be upheld.

The parties have stipulated that an issue in dispute to be determined by the Board is the question of a retroactive date. The panel, therefore, submits its recommendation with respect to this issue. The circumstances surrounding the case make it difficult to determine what, if any, the appropriate retroactive date should be. The union has urged that the date be Sept. 22, 1944, which was the date that other disputed items were certified to the National War Labor Board. However, since the matters in dispute in the instant case are quite separate and distinct from the matters

in dispute in the other case, there is no justification for recommending Sept. 22, 1944, simply because that happened to be the date upon which other disputed issues were certified to the War Labor Board.

The company urges that the provision be made effective on the date of approval by the War Labor Board, which was June 6, 1945, but, in no event any earlier than Mar. 15, 1945, the date this case was certified to the War Labor Board. In arguing that the effective date should be the date of approval, the company relies on Art. XII, Sec. (9), of the Oct. 14, 1944, agreement which provides as follows:

"In the event any provision of this agreement requires or contemplates a wage adjustment within the meaning of Executive Order 9250, such provision shall not be binding upon the parties hereto nor shall it become effective until the approval of the appropriate government agency is obtained or until a statement in writing is obtained from the appropriate government agency that no such approval is necessary."

Since the "40-hour clause" was not included in the agreement of Oct. 14, 1944, there is at least some question as to whether Sec. (9) would be applicable to the "40-hour clause." But, even if it is applicable, it is felt that consideration must be given to other factors in the case.

It must be noted that the "40-hour clause" was agreed upon by the parties prior to the time the agreement of Oct. 14, 1944, was reached. According to a statement in the union's brief, which does not appear to be contradicted, the provision itself was agreed upon during the conciliation conferences on July 17, 1944. However, it is clear that both parties recognized that the provision would require the approval of the Board. No Form 10 was prepared by the company until February of 1945, although the union had as early as October 1944 requested the company to prepare the necessary papers for submission to the Board. The union offered to prepare the papers, if the company so desired. The company, however, replied on Oct. 30, 1944, that it was at that time preparing the Form 10. Certainly this was sufficient to lead the union to believe that the Form 10 would be ready within a reasonable time.

Apparently the company's reason for delaying the Form 10 was in order that a single Form 10 covering other plants and other unions might be submitted. While the company may have had good reason for delay, nevertheless the panel majority concludes that it would be inequitable to the employees in these two units to hold that provision which had long been agreed upon should not be made effective until its final approval. This would place the company in a position of delaying the submission of the Form 10 indefinitely, to its own advantage and to the employees' disadvantage. The majority believes that there was a responsibility on the company's part to cooperate with the union in preparing the necessary papers within a reasonable time after the agreement had been reached.

The company has contended that there has been a valid agreement between the parties at all times since Oct. 14, 1944, and that this agreement, although including a provision on hours, does not contain the "40-hour clause." In the opinion of the majority of the panel, the fact that the "40-hour clause" was not included in the Oct. 14 agreement should not preclude the "40-hour clause" from becoming effective at a date prior to the termination of the Oct. 14 agreement. This agreement was an interim agreement only which was to remain in effect until a complete agreement was executed upon final determination by the War Labor Board of the disputed issues in Cases No. 111-11182-D and 111-11183-D. Apparently the Oct. 14 interim agreement covered only those matters which were not in dispute and which the parties did not contemplate would require War Labor Board approval. The holiday provision, for example, was not included in the Oct. 14 agreement although it has been in effect since its approval by the War Labor Board in October 1944. The agreement on the "40-hour clause" should also be put into effect even though it was not included in the Oct. 14 agreement.

The panel majority, with industry members dissenting, believes that an effective date of Nov. 1, 1944, is fair and equitable under all the circumstances of the case and so recommends to the Board. This date has been suggested because it represents a reasonable length of time after signing of the Oct. 14, 1944, agreement within which the Form 10 might have been prepared. It is about a

week after the letter of the union to the company dated Oct. 25, 1944, in which the union urged the company to expedite the Form 10 and offered to prepare the Form 10. It follows within a few days the letter of the company to the union advising the union that the Form 10 was being prepared. And it is approximately the same time that the Board approved the parties' agreement on holidays, which was on Oct. 18, 1944. The panel majority believes that these two provisions should be similarly treated. Both were agreed upon during negotiations; neither was included in the Oct. 14 agreement; and they are similar in that the parties contemplated submitting both to the War Labor Board for approval.

Signed by Benjamin Aaron and Philip S. Brayton, representing the public; R. Randall Irwin and Robert W. Knadler, representing employers; subject to dissent on effective date; and Garry Cotton and Andrew Leiper, representing labor, subject to dissent on interpretation of overtime for sixth day of workweek where first five days include non-worked holiday.

F. H. VAHLSING, INC.—
Decision of National Board

In re F. H. VAHLSING, INC. [Weslaco, Tex.] *and* FOOD, TOBACCO, AGRICULTURAL AND ALLIED WORKERS UNION OF AMERICA, LOCAL 35 (CIO). Case No. 111-7180-D, June 26, 1945 (made public Aug. 7, 1945).

Amending 22 War Lab. Rep. 606.

COLLECTIVE BARGAINING—MAINTENANCE OF MEMBERSHIP—Change in corporate structure to avoid bargaining—Acceptance of prior NLRB certification

Certified union representing employees of company which is found to have changed its corporate structure in order to avoid duty of bargaining is entitled to maintenance of membership and other contract terms determined by Regional Board, provided that, if National Labor Relations Board finds that union's certification is not applicable to successor company, maintenance-of-membership clause should become null and void and remainder of contract should be subject to termination. Regional Board's order providing that its directed terms should become effective only upon finding by NLRB that certification continues in effect is vacated.

For other rulings see Index-Digest 32.415, 82.874, 82.944, and 110.480 in this or other volumes.

Majority decision of Board amending directive order of Regional Board VIII (Dallas). Public members concurring: Dexter M. Keezer and Lewis M. Gill. Employer members dissenting on acceptance in part of union's petition, Pars. I(a), II, and IV: Earl S. Cannon and S. Bayard Colgate. Labor member dissenting on Pars. I(b) and III: Delmond Garst and J. A. Brownlow.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the petitions filed by the parties for review of the Eighth Regional War Labor Board's directive order of Feb. 8, 1945 [Jan. 30, 1945, 22 War Lab. Rep. 606], in the above entitled case and having accepted in part the union petition and having reviewed the merits of the case with respect to maintenance of membership and termination date of the contract, hereby orders:

I: (a) The said directive order of Feb. 8, 1945 [Jan. 30, 1945] is modified by striking out the provision that the order shall become effective only upon decision by the National Labor Relations Board that its prior certification of the subject union as bargaining agent of the employees of F. H. Vahlsing, Inc., is applicable to employees of the Bonita Fruit Co., Inc., and substituting therefor the provision that the said order, in so far as it relates to maintenance of membership, shall become null and void, if the National Labor Relations Board rules that the certification is no longer effective.

(b) In all other respects the maintenance-of-membership provision of

the said order of Feb. 8, 1945 [Jan. 30, 1945], is affirmed.

II. The said directive order of Feb. 8, 1945 [Jan. 30, 1945], is amended to provide that the duration of the contract shall be one year from the date of that order, subject to termination, however, in the event the National Labor Relations Board rules that its certification of the subject union is no longer effective.

III. Those portions of the union petition which relate to the issues of overtime, holidays, and wages are hereby denied.

IV. The company petition for review is denied.

V. The requests for an oral hearing are denied.

VI. Subject to the provision of Pars. I and II above, the terms and conditions of employment set forth in the Eighth Regional War Labor Board's directive order of Feb. 8, 1945 [Jan. 3, 1945], shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Report and Recommendations of Panel of Region VIII (Dallas) *

Dec. 13, 1944

BACKGROUND

F. H. Vahlsing, Inc., is a Texas corporation, engaged generally in the fruit and vegetable business in the Rio Grande Valley, with its principal office at Elsa, Tex. Prior to Aug. 29, 1944, it operated a fruit division at Weslaco, Tex.

Bonita Fruit Company, Inc., is a Texas corporation, engaged in the business of buying, packing, selling, and shipping citrus fruit, its principal place of business being located at Weslaco, Tex.

Texas Fruit and Vegetable Workers Union, Local No. 35, is an affiliate of the United Cannery, Agricultural Packing and Allied Workers of America (CIO).

Bonita Fruit Company, Inc., employs from 90 to 100 persons; F. H. Vahlsing employed about 68 persons at its Weslaco division at the close of the fruit season in April 1944. The union says that 48 of this number were union members. This the company denies, estimating the number at around 25.

In December 1943, F. H. Vahlsing, Inc., was advised by the union that it represented a majority of the packers and shed laborers at the company's fruit division plant at Weslaco, Tex. The union asked recognition as the exclusive bargaining agent of such employees. Upon refusal of the company to recognize it as such, the union petitioned the National Labor Relations Board for an election.

On Jan. 11, 1944, F. H. Vahlsing, Inc., agreed to such an election. Jan. 15, the election was held. Jan. 21, 1944, the union was certified by the National Labor Relations Board as the exclusive bargaining agent of the packers and shed laborers employed by the company at its first division plant at Weslaco, Tex.

Thereafter, and shortly prior to Feb. 1, 1944, representatives of the company and the union met for the purpose of negotiating a first contract. There were three or four such meetings. After the first meeting, the union submitted a written contract for consideration by the company's representatives. Subsequently the company submitted a written contract containing its counter proposals. Both the proposals of the union and the counterproposals of the company were tentative.

The parties being unable to agree upon all material provisions, the dispute was referred by the union to the Conciliation Service of the United States Department of Labor. Mr. Charles E. Young, of that service, met with the parties on Mar. 8, 1944, and Mar. 10, 1944, to help them reconcile their differences. His efforts were unsuccessful, and on Mar. 25, 1944, the dispute was certified to the National War Labor Board. That Board, in turn, referred the matter to the Eighth Regional War Labor Board, which designated a panel to hear the disputed issues and set May 4, 1944, as the date for the hearing. The panel convened at the appointed time. The union appeared and presented its case. F. H. Vahlsing, Inc., did not appear (having stated previously, or so the union indicates, that it planned to go out of business).

For reasons not material to detail here, the panel failed to file any report, and nothing further was done until some time subsequent to Oct.

* Ed. Note: Only that portion of the panel report relating to change of company name, union security, and termination is reproduced.

9, 1944, when the union asked the Regional Board to reopen the matter as a result of the occurrence of the following events:

F. H. Vahlsing, Inc., closed its Weslaco shed about Apr. 20, 1944, the end or near the end of the fruit season in the Rio Grande Valley. At that time the company's employees were laid off, as was customary. Each received a statement of availability.

On Oct. 15, 1944, at the opening of the 1944-1945 season, the Bonita Fruit Company, Inc., began conducting a business similar to that theretofore engaged in by F. H. Vahlsing, Inc., in the shed formerly occupied by the latter company. The union, believing that the interests behind F. H. Vahlsing, Inc., was simply doing business under a different name and different corporate structure to avoid that company's obligation to deal with the union, thereafter filed such a charge with the Regional Board. About the same time (Oct. 19), it filed charges with the National Labor Relations Board alleging violations of Sec. 8 (1), (3), and (5) of the National Labor Relations Act.

The Regional Board, on Oct. 17, advised F. H. Vahlsing, Inc., and the union of a hearing to be held before a tripartite panel at 10 a.m. Nov. 3, at Weslaco, Tex. The parties were further advised that the panel, before going into the merits of the certified issues of union security, wages, and overtime, would make a determination of fact on the union's charge as stated above; that, if the panel found the facts as charged, it would then hear the issues certified by the Conciliation Service; but that, if the union failed to substantiate its charge, the hearing would be terminated.

Pursuant to the notice given, the matter was heard by the panel Nov. 3, 1944. F. H. Vahlsing, Inc., though duly notified was not represented. Bonita Fruit Company, Inc., though not notified, appeared through its attorney and president.

ISSUES

[ED. NOTE: The issues in dispute are:

1. Change of company name,
2. Union security,
3. Check-off,
4. Hours of work,
5. Wages and rates of pay,
6. Settlement of disputes,
7. Termination, and
8. Seniority.]

1. Change of Company Name

Was the name under which and the instrumentality by means of which the business of F. H. Vahlsing, Inc., was conducted at Weslaco, Tex., changed from F. H. Vahlsing, Inc., to Bonita Fruit Company, Inc., to avoid the responsibility of F. H. Vahlsing, Inc., in dealing with the union?

Testimony and Findings

The testimony generally was to the following effect: F. H. Vahlsing, Inc., a New York corporation, was granted a permit to do business in Texas on Dec. 28, 1926. Its Texas office was located at Weslaco, Tex. It surrendered its permit Dec. 22, 1935. On that date, a Texas corporation was organized under the name of F. H. Vahlsing, Inc. Its principal office was located at Elsa, Tex. Its incorporators were Frederick H. Vahlsing, Melvin A. Giese, and Eileen Giese. The president of that company was F. H. Vahlsing. Melvin A. Giese was secretary-treasurer. The names of the stockholders do not appear.

As we have said, that company had a fruit division located at Weslaco, Tex., and there engaged in the business of buying, packing, selling, and shipping grapefruit and oranges during the fruit season.

Bonita Fruit Company, Inc., was organized Aug. 29, 1944. Its authorized capital stock is one hundred thousand dollars ($100,000.) of which fifty thousand dollars ($50,000.) has been paid in. Its directors are Barr Ewing, Martin Hamilton, Louis Witte, and Albert Pfaffenroth.

Its officers are Barr Ewing, president; Martin Hamilton, vice-president; Louis Witte treasurer; and Albert Pfaffenroth, secretary. The subscribers to the capital stock are F. H. Vahlsing, seventy-five thousand dollars ($75,000.), of which amount thirty-seven thousand five hundred dollars ($37,500.) has been paid in cash and Melvin A. Giese and Eileen Giese, twenty-five thousand dollars ($25,000.), of which twelve thouand five hundred dollars ($12,500.) has been paid in cash. All of the parties named are residents of Texas, except Vahlsing and Pfaffenroth, who are residents of New Jersey.

On Aug. 29, 1944, F. H. Vahlsing, Inc., acting by and through its representative, Melvin A. Giese, executed a bill of sale to Bonita Fruit Company, Inc., by which, for the total consideration of forty thousand dollars ($40,000.), thirty-five thousand dollars

($35,000.), in cash, it sold to Bonita Fruit Company, Inc., two buildings under lease agreement located just east of the city limits of Weslaco, together with all machinery, equipment, supplies, etc. therein belonging to F. H. Vahlsing, Inc. [and] two automobiles, and granted Bonita Fruit Company, Inc., the right to use the Vahlsing labels, subject to Vahlsing's privilege to cancel this right upon certain conditions.

Under that agreement, Bonita Fruit Company, Inc., received some two hundred and fifty thousand (250,000) labels similar to that offered in evidence by the union, marked "Union's Exhibit 4." But, although Bonita Fruit Company, Inc., acquired a stock of labels and the right to use the same, it did not acquire the right to the label itself, which is registered under the name of F. H. Vahlsing, Inc., and which is still owned by F. H. Vahlsing, Inc. The name of F. H. Vahlsing, Inc., still appears on the labels used by Bonita Fruit Company, Inc. Bonita Fruit Company, Inc., also rented the Maxey Building, formerly rented by F. H. Vahlsing, Inc., and since the beginning of the fruit season, has conducted its business in that building.

Some of the members of the union applied for employment with Bonita Fruit Company, Inc., when it opened for business on or about October 15. There was testimony that Cecil Ferguson, plant manager, told some of them that the company was not hiring any of the old employees; that he was going to break in a new crew. The applications of some were in writing, in the form of letters. Mr. Ewing, president of the company, who said that he supervised employment and received the company's mail, stated that he had never seen any such applications. But this testimony was negative in character. It does not overcome the positive evidence of the union. And the fact remains that no union members formerly employed by F. H. Vahlsing, Inc., were employed by Bonita Fruit Company, Inc., when it began to operate in October, although it did hire some former employees who had been members of the union but who had discontinued their union affiliations.

Mr. Ewing, president of the company, does the buying and selling of fruit for the company and receives a salary of seventy-five dollars ($75.00) a week and 10 per cent of the profits. He has a car allowance also. During the 1943-44 season, as a private contractor, he had a contract with F. H. Vahlsing, Inc., to harvest the fruit and truck it to the company's shed at Weslaco. He now has such a contract with Bonita Fruit Company, Inc. Some of the other officers, including Mr. Witte, receive larger salaries but do not share in the profits. Mr. Ewing owns no stock in Bonita Fruit Company, Inc. He did not know the amount of stock owned by F. H. Vahlsing or by Melvin A. or Eileen Giese, although he obtained that information subsequently upon request of the panel.

Martin Hamilton, vice-president, and one of the directors of Bonita Fruit Company, Inc., works for F. H. Vahlsing, Inc., at Elsa, Tex. Louis Witte, a director and treasurer of Bonita Fruit Company, Inc., held the position of manager with F. H. Vahlsing, Inc., during part of the 1943-44 season. Cecil Ferguson, who is plant manager of Bonita Fruit Company, Inc., was shed superintendent or foreman for F. H. Vahlsing, Inc.

After Bonita Fruit Company, Inc., was incorporated, the union requested the company to bargain with it. Mr. Ewing, on behalf of the company, declined to do so, although the testimony is not clear as to whether this was a refusal to bargain at any time or simply a refusal to bargain at the particular time covered by the union's request. At the hearing, however, Mr. Ewing indicated that he did not have anything to do with bargaining with the union.

Union's Position

It was the position of the union that the sole purpose of the change in corporate structure was to enable F. H. Vahlsing, Inc., to escape its obligation to bargain with the union.

Company's Position

It was the position of the representatives of Bonita Fruit Company, Inc., that it was a separate, distinct corporation from F. H. Vahlsing, Inc., to be considered as such for the purpose of determining this dispute; that the union had not been certified as the bargaining agency of the employees of Bonita Fruit Company, Inc.; that it had no obligation to bargain with the union; and that the testimony summarized above merely indicated that F. H. Vahlsing was a person of diverse business interests not

that the changes which had taken place in the corporate structure represented changes designed to enable F. H. Vahlsing, Inc., to escape its responsibility to the union.

Conclusions

The panel is unanimously of the opinion that this first issue which it was directed to decide should be answered in the affirmative.

It is true that Bonita Fruit Company, Inc., is a separate and distinct corporation from F. H. Vahlsing, Inc. Yet the same economic unit (F. H. Vahlsing, Melvin A. Giese and Eileen Giese), which formerly did business at Weslaco under the name of F. H. Vahlsing, Inc., is doing it today under the name of Bonita Fruit Company, Inc. The identity of stockholders, the large amount of stock owned by F. H. Vahlsing in Bonita Fruit Company, Inc., the fact that none of the old employees of F. H. Vahlsing, Inc., who were union members were rehired by Bonita Fruit Company, Inc., although some who had severed their union connections were reemployed, the fact that F. H. Vahlsing, Inc., did not even appear in answer to the union's charge, and other facts set out above, not necessary to restate here, permit of no other conclusion.

While the burden of convincing us was on the union, the evidence which we have recited required the companies to come forward with some explanation at least as plausible as that made the basis of the union's charge. This they failed to do.

In our opinion, the economic unit to which we have referred should not be permitted to avoid its obligation to bargain with the union or to oust the War Labor Board of jurisdiction over the dispute certified to it by the Conciliation Service, through the device of separately incorporating the business which theretofore had been simply a division of its more diversified interests, all of which were carried on through the medium of one corporation. We think this is an appropriate case for disregarding corporate entities under the principle generally accepted in this state and well expressed in the following excerpt from the opinion in the case of Continental Supply Co. v. Forrest E. Gilmore Co., 55 SW (2) 622, 628:

"The legal fiction of the separate entities of two corporations, the stock of which is owned by the same parties, should be disregarded when necessary for the prevention of fraud or to protect the legal rights of third parties. Upon ascertainment of all the facts, it is the prerogative of the court and not the jury to look through the forms to the substance of the relations existing between the corporations. Williams v. Freeport Sulphur Company (Tex. Civ. App.) 40 SW(2) 817; Oriental Investment Co. v. Barclay, 25 Tex. Civ.App. 543, 64 SW 80; Buie v. Chicago, etc. Ry., 95 Tex. 51, 65 SW 27, 55 LRA 861; Fowler v. Small (Tex. Civ.App.) 244 SW 1096, 1097; O'Neal v. Jones (Tex. Civ.App.) 34 SW(2) 689; 14 CJ 61, Sec. 22; Id. 62, Sec. 25; 10 Tex. Jur. 648, Sec. 149.

"Upon ascertainment of the facts, the courts will disregard the fiction of corporate entity where the fiction (1) is used as a means of perpetrating fraud; (2) where a corporation is organized and operated as a mere tool or business conduit of another corporation; (3) where the corporate fiction is employed to achieve or perpetuate monopoly; (5) where the corporate fiction is used to circumvent a statute; and (6) where the corporate fiction is relied upon as a protection of crime or to justify wrong."

We, therefore, conclude, for the purposes of this case, that Bonita Fruit Company, Inc., is the same as F. H. Vahlsing, Inc., and that it is bound by all F. H. Vahlsing's obligations as regards the union and its members and those for whom it has bargaining rights; and that whatever order the Board may see fit to enter herein may appropriately run to Bonita Fruit Company, Inc.

Recommendations

The determination of the question of fact we were impaneled to decide has caused us no difficulty, but the question of what is appropriate Board action, in the light of our finding, is another matter. We were not expressly directed to make any recommendations to the Board in this regard, and at first we were inclined to content ourselves with finding facts, but we have concluded that our report might be deemed incomplete if we make no recommendations on this phase of the hearing, and, accordingly, we submit the following:

The union requests the Board to enter an order (1) directing the reemployment of those of its members desiring reemployment who were employed by F. H. Vahlsing, Inc., at the

close of that company's fruit season Apr. 20, 1944, and (2) prescribing the terms and conditions of employment which shall govern the relations between Bonita Fruit Company, Inc., and its employees.

First: We do not see how we can recommend that the Board grant the first request of the union unless we can say that the refusal of Bonita Fruit Company, Inc., to employ persons theretofore employed by F. H. Vahlsing, Inc., was a violation of some obligation it owed to them growing out of the employer-employee relationship or of the provisions of Sec. 8(c) of the National Labor Relations Act, and, in the latter event, unless we can recommend that the Board apply the remedies prescribed by that act under the circumstances shown to exist here.

We cannot agree that Bonita Fruit Company, Inc., when it opened its season Oct. 15, had a legal obligation to reemploy persons who theretofore had worked for F. H. Vahlsing, Inc. F. H. Vahlsing, Inc., would have had no such obligation had it continued to transact the business. Its employees ceased to be such Apr. 20, 1944, when they received their statements of availability, as all of them did. F. H. Vahlsing, Inc., was bound by no contract to give its employees of one season consideration when the time came to employ for the next. Bonita Fruit Company, Inc., therefore, inherited no such obligation. There is not even a provision in the contract submitted by the union to F. H. Vahlsing, Inc., designed to require recognition of the principle of seniority in the matter of rehiring.

We think the provision requiring recognition of the principle of seniority in the matter of layoffs and rehiring is a just and salutary one, and one which should be embodied in collective bargaining agreements, and, hereinafter, we will recommend that such a provision be included in the contract between these parties. But, in the absence of such agreement or some other legal compulsion, we see no basis for saying that Bonita Fruit Company, Inc., was required to give preference in rehiring to former employees of F. H. Vahlsing, Inc.

Of course, on the basis of the corporate and economic identity we have found to exist, or even in the absence of such identity for that matter, if Bonita Fruit Company, Inc., refused to employ former employees of F. H. Vahlsing, Inc., simply because they were members of the union or because of some union activity or for any reason violative of the National Labor Relations Act, the company would be subject to the remedial provisions of that act and might be required to offer employment to such union members as desired the same, with or without back pay, as the National Labor Relations Board might see fit to determine. (Phelps Dodge Corp. v. National Labor Board, 313 US 177.)

We should say, in this connection, that in our opinion it is more than a coincidence that Bointa Fruit Company, Inc., has no employees today who are union members or at least who were union members when they were employed. On the basis of the evidence offered before us, we are of the opinion that the company hired a new crew in order to avoid hiring union members who formerly worked for F. H. Vahlsing, Inc., and failed or refused to hire such union members because of their union affiliations.

However, we were not expressly directed to hear the question of whether or not Bonita Fruit Company, Inc.'s, failure or refusal to employ union members formerly employed by F. H. Vahlsing, Inc., was in violation of the provisions of the National Labor Relations Act. The charge we were directed to hear, set out in the notice to the parties, was that "F. H. Vahlsing, Inc., had only changed the company name in order to avoid its responsibility in dealing with the union."

In view of this fact and the further fact that charges have been filed with the National Labor Relations Board designed to obtain the same relief in part the union seeks to obtain here, and, since we know that the Board will act expeditiously in its investigation and determination of such charges, we are in doubt as to whether this Board should anticipate what the order of the National Labor Relations Board will be and, in advance of the order, afford the union the relief which may more appropriately be granted by the National Labor Relations Board as a result of its own investigation and after the kind of hearing on that issue contemplated under the National Labor Relations Act. See statement of "Principle Governing Action of the War Labor Board in Cases Involving Jurisdiction and Rulings of the National Labor Relations Board" issued Jan. 4, 1944. In any event, we do not feel we should recommend that it do so, although we have made findings upon the basis of

which it can act, if it does not share our doubt.

Second: The union's second request must be considered in the light of the fact that the undisputed testimony in this case shows that not only does the union not number among its members a majority of the employees of Bonita Fruit Company, Inc., but that none of them is a union member or at least that none of them was a member when he was employed. Yet, at the time the union was certified by the National Labor Relations Board on Jan. 21, 1944, it did represent a majority of the employees of F. H. Vahlsing, Inc., voting at the election. This change has been brought about in part by the failure or refusal of Bonita Fruit Company, Inc., to reemploy, at the opening of its fruit season some time after Oct. 9, 1944, those union members formerly employed by F. H. Vahlsing, Inc., who desired employment.

But to what extent is uncertain. Only 32 employees voted for the union as the collective bargaining agent at the election held Jan. 21, 1944, although there was evidence that the union's membership later increased. There were approximately 84 shed laborers and packers employed by the company on Nov. 10, 1944. In its original charge before the National Labor Relations Board, the union alleged that the company had refused to employ or reemploy 10 of its members whose names were given and others not named. Since then it has increased the number of members indicated by names to 15. If all of the members who desire reemployment were ordered reemployed by the National Labor Relations Board or the Regional War Labor Board, the union would fall short of having a majority of the employees on the basis of these figures.

Our problem is to determine whether, under the circumstances, the appropriate solution of this dispute lies in recommending that the Board fix terms and conditions of employment at the request of the union, including provisions covering union security and representation. Compare the decision of the War Labor Board in Universal Furniture Manufacturing Company and United Furniture Workers of America, Local 576 (CIO), decided Oct. 4, 1944 [19 War Lab. Rep. 262].

Normally the Board treats a certification order of the National Labor Relations Board as conclusive for a period of one year (Statement of "Principles Governing Action of the War Labor Board in Cases Involving Jurisdiction and Rulings of the National Labor Relations Board", issued Jan. 4, 1944), in that particular reflecting the general practice of the National Labor Relations Board. Should we so treat the certification here, even though we know from the evidence as a fact that the union does not represent a majority of the present employees of Bonita Fruit Company, Inc., and although it would appear that the union will not have such a majority even if all its members who desire reemployment are reemployed? In considering this matter, we cannot ignore the fact that the present employees have not indicated that they wish the union to represent them in attempting to obtain the particular contract sought by it, or, for that matter, any contract at all.

It is true that such employees are the only parties who could complain. Bonita Fruit Company, Inc., is willing to recognize the union as the collective bargaining agency. It has included a recognition clause in Art. 1, Sec. A, of the contract which it has indicated it is willing to sign. But, in view of the decision we have reached of the disputed issues hereafter discussed, the interests of the present employees will not be affected adversely, and the possibility of their objection is theoretical, rather than real. And we can go part way toward removing even the possibility of such objection, if we recommend that the Board's order cease to be effective if, prior to the expiration date of the contract as fixed by the Regional Board, the National Labor Relations Board should determine that the union no longer represents a majority of the company's employees.

Accordingly, we unanimously recommend that the Board fix the terms and conditions of employment between Bonita Fruit Company, Inc., and its employees working as packers and as shed laborers, requiring the execution of a collective bargaining contract containing the provisions on which agreement has been reached by the parties, as well as such additional provisions as the Board may require included by way of settling this dispute.

At the conclusion of the hearing on the first issue, the panel indicated its findings and its intention to consider the issues certified by the Conciliation Service: Union security, wages, and overtime. At that point, two objections to our proceeding were urged:

First, that the dispute was not one which might become so serious as to lead to substantial interference with the war effort, and hence, not one of which the Board has jurisdiction; and second, that the action of the Board in assuming jurisdiction was premature, inasmuch as the parties had not been given full opportunity to resolve their difference through the medium of collective bargaining. These points are elaborated on pp. 1-3, inclusive, of the brief of F. H. Vahlsing, Inc., filed in connection with the original panel hearing, which was adopted by Bonita Fruit Company, Inc.

We have no authority to pass upon the plea to the jurisdiction of the Board and accordingly make no specific findings or recommendations with respect thereto.

For the benefit of the parties, however, we might say that it is our understanding that the Board treats the certification of a dispute by the Conciliation Service as conclusive of the fact that the dispute is one which may lead to a substantial interference with the war effort. (J. S. Bache & Co. and American Federation of Office Employees, Local No. 20940 (AFL), decided Sept. 29, 1944 [18 War Lab. Rep. 594].)

What we have said or may say elsewhere in relation to the issues submitted to us for findings and recommendations will indicate our views as regards the objection that the parties have not had full opportunity to resolve their differences through collective bargaining.

2. Union Security

Testimony

The testimony indicates the following:

The CIO began its organization campaign in the valley about one year ago. It has met with considerable bitter and organized opposition on the part of some of the packers and fruit growers. Mr. Louis Witte, a director and officer of the company, is said to have been active in directing organized opposition to the union's efforts. Such opposition has resulted in several employers being found guilty of unfair labor practices by the National Labor Relations Board.

The parent union, United Cannery, Agricultural, Packing and Allied Workers of America, was organized July 8, 1937. There have been no authorized strikes in the parent organization since Pearl Harbor.

The evidence discloses one case where a number of the members of Local 35, the union involved here, (they were not employees of F. H. Vahlsing, Inc.) walked off a job one Friday afternoon. Saturday and Sunday were days off. On Monday Mr. Nation, the union representative, ordered the employees back to work. This was an unauthorized walkout and occurred without the knowledge and consent of the union officials.

There was a good deal of testimony concerning a work stoppage at the plant of F. H. Vahlsing, Inc., about Jan. 19, 1944, after the election but before the union's certification. It appears that two of the company's women employees had a fight in Weslaco during the noon hour. The company contends that, because of its refusal to discharge one of the participants at the request of certain union members, the employees refused to work, and that the work stoppage continued for several days. The union, on the other hand, contends that the employees reported for work and were willing to go to work but that Cecil Ferguson, plant superintendent (who failed to testify), refused to permit them to do so. In any event, there was a work stoppage for a few days on the occasion in question.

Union's Position

The union asks for a closed shop. (Union's Proposal, Art. I-B)

Company's Position

The company opposes any form of union security.

Findings and Recommendations

We are unanimous in recommending that the request of the union for a closed shop be denied. At the same time, we unanimously recommend that the directive order of the Board include the standard maintenance-of-membership provision, with the usual 15-day escape clause.

The company, in our opinion, has sought to discourage union activity, and we feel that the union should be protected against possible continued

manifestation of this anti-union attitude. It is true, as we stated above, that there has been at least one instance where members of the union walked off a job for a short length of time. There is also the work stoppage incident at F. H. Vahlsing, Inc. But we are not convinced that this was the fault of the union, nor do we think that, even if it were, the union should be denied the protection of a maintenance-of-membership clause under the circumstances of this case.

Copies of the constitution and by-laws of the parent union and its subsidiary, Local No. 35, Texas Fruit and Vegetable Workers Union, are on file in this case. They indicate democratic controls and procedures within the union.

Mr. Melden, industry member, while generally opposing a maintenance-of-membership provision, acquiesces in our recommendation under the particular facts of this case.

We think our action is consistent with the principles announced in United Furniture Manufacturing Company and the United Furniture Workers of America, Local 576 (CIO), decided Oct. 14, 1944, to which we have referred hereinabove, in the light of the company's recognition of the union as the exclusive bargaining agent.

[Ed. Note: Issues 3 through 6, discussed in the panel report at this point, are omitted.]

7. Termination

Union's Position

In the tentative contract submitted by the union, Art. VIII, it was proposed that the agreement should continue in effect for two yars from and after its effective date and for a period thereafter of not more than 60 days pending a continuation of the agreement or the signing of a new agreement.

At the hearing, the union indicated that it would be willing to modify its original proposal and accept a one year's contract.

Company's Position

In its tentative contract submitted by the company, it is proposed that the agreement shall continue in force for the duration of the present grapefruit season, which will expire May 1, 1945.

After the hearing had formally concluded, but while all parties were still present, the company indicated to the industry member that it would agree to a modification of its termination clause so as to provide that the agreement should remain in force for one year from its effective date, provided there be included a clause permitting either party to reopen the contract on the matter of wages at any time after the expiration of six months from its effective date. We have recommended the insertion of such a clause hereinabove, thus covering the same subject matter dealt with in Par. G, Art. IV, of the union's proposal.

Recommendation

We unanimously recommend that the contract between the parties, except the provision regarding wages which we have treated separately hereinabove, be effective as of the date of the Board's directive order and that it shall continue in existence for a period of 12 months thereafter, subject to termination in the event of the contingency set out in our recommendation under Issue No. 1. We have not recommended that the agreement continue beyond the 12 months' period, as was requested by the union in its original proposal. We do not think, under the peculiar circumstances of this case and the rather anomalous situation in which the union finds itself, that we should undertake to bind the parties beyond the year's period.

[Ed. Note: Issue 8, discussed in the panel report at this point, is omitted.]

Signed by Ogden K. Shannon, representing the public; Theodore M. Melden, representing employers, subject to dissent on Issue 5; and J. J. Hickman, representing labor, subject to dissent on Issue 4.

RENO & SPARKS, NEV., GROCERY INDUSTRY—

Decision of National Board

In re RENO AND SPARKS, NEVADA, GROCERY INDUSTRY *and* RETAIL CLERKS INTERNATIONAL PROTECTIVE ASSOCIATION, LOCAL 1434 (AFL). Case No. 111-8880-D, June 20, 1945 (made public Aug. 7, 1945).

Affirming 21 War Lab. Rep. 308.

WAGE ADJUSTMENTS—Reduction of salaries corresponding to hour reduction—Reopening provision

Employees are not entitled to adjustment of rates necessary to maintain weekly salaries at level prevailing before Regional Board reduced straight-time hours from 54 to 48 weekly. Petition for review of Regional order reducing hours and salaries is denied but denial is without prejudice to either party's right to reopen wage issue in event of change in national wage stabilization policy.

For other ruling see Index-Digest 225.968, 225.780, and 65.538 in this or other volumes.

Majority decision of Board affirming decision of Regional Board X (San Francisco). Public members concurring: Jesse Freidin, Edwin E. Witte, Lewis M. Gill, and Nathan P. Feinsinger. Labor members dissenting on Par. I: Elmer E. Walker, James A. Brownlow, Delmond Garst, and Carl J. Shipley. Employer members dissenting on Par. II: William Maloney, Earl Cannon, S. Bayard Colgate, and Charles S. Roberts.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the petition filed in the above entitled case for review of the directive order dated Dec. 28, 1944 * [21 War Lab. Rep. 308], of the Regional War Labor Board for the Tenth Region, hereby decides the dispute between the parties and orders:

I. The said petition for review is denied, and the said directive order of Dec. 28, 1944, is hereby affirmed and adopted as the order of the National War Labor Board.

II. Denial of the petition is without prejudice to the right of either party to reopen the wage question, in the event of any change in the national wage stabilization policy.

III. The terms and conditions of employment set forth in said directive order of Dec. 28, 1944, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

* Ed. Note: Issuance date, date of Regional Board action was Dec. 13, 1944.

EDWARD ERMOLD CO.—

Decision of National Board

In re EDWARD ERMOLD COMPANY [New York, N. Y.] *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, AMALGAMATED MACHINE AND INSTRUMENT WORKERS, LOCAL 475 (CIO). Case No. 111-6453-D, June 16, 1945 (made public Aug. 7, 1945).

Amending 20 War Lab. Rep. 629.

WAGE ADJUSTMENTS — Merit increases

Employer who has granted merit increases to between ten and thirty per cent of employees each quarter should negotiate with union objective standards of performance to be used in making quarterly reviews, claims of discrimination or improper application of such standards to be submissible to grievance procedure and arbitration. Amount of merit increases is limited to overall average of ten cents per hour in any year. Board accordingly amends Regional Board's order, which required grant of merit increases to all employees making "normal progress" subject to same ten-cent limitation.

For other rulings see Index-Digest 225.640 and 60.818 in this or other volumes.

Majority decision of Board amending decision of Regional Board II (New York). Public members concurring: Nathan P. Feinsinger and Edwin E. Witte. Labor members dissenting on acceptance of company pe-

tition: Carl B. Shipley and James A. Brownlow. Employer members dissenting on Par. II: Earl Cannon and Horace B. Horton.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act. of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby accepts the petition filed by the company for review of the supplemental directive order of the Second Regional War Labor Board, dated Dec. 11, 1944, [20 War Lab. Rep. 629] and orders as follows: *

I. The said directive order is hereby vacated, and that portion of Par. 1 of the directive order of the Second Regional War Labor Board in this case, dated June 8, 1944, dealing with merit increases, is hereby modified to read as follows:

"(a) The company and the union shall, by negotiations, establish objective standards of performance which shall fairly reflect the efficiency, skill, and production requirements (as measured by such factors as quality of output, quantity of production, and attendance) which should be met by employees of various classifications as a condition of their being advanced within the applicable rate ranges.

"(b) At quarterly intervals during each year, each employee shall be the subject of consideration by the employer to determine whether or not the employee has satisfied the standards of meritorious performance. If the employer determines that the performance of the employee warrants a merit [increase], adjustment in rates shall be made accordingly, effective as of the quarterly review date. A list of the employees to whom increases have been granted shall be furnished by the employer to the union. Merit reviews, either of individual employees or of groups of employees, may, by agreement of the company and the union, be made at different intervals from those hereby prescribed.

"(c) Any claim that the company has exercised discrimination or has improperly measured the employee's performance with reference to agreed upon standards may be submitted to the grievance procedure of the contract and, if necessary, to arbitration.

"(d) Merit adjustments in an individual employee's hourly wage rates shall be in steps of five cents or one-half of the rate range in that employee's classification, whichever may be smaller; except that a lesser amount may be granted when necessary in order to raise an employee to the top of the rate range in his classification. The allowable amounts prescribed by this paragraph may be altered by agreement of the parties.

"(e) The total of the wage adjustments under the above provisions shall in no event exceed an overall average of 10 cents per hour in any 12-month period commencing July 1 of one year and terminating June 30 of the next year."

II. That part of the petition for review which relates to unfair procedure is hereby denied.

III. The terms and conditions of employment set forth in the said directive order of June 8, 1944, as modified herein, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intentions of the parties to have their relations governed thereby as ordered by the National War Labor Board.

* Ed. Note: The Board's decision on this issue is similar to its decision in the case of the Rane Tool Co., Inc., 24 War Lab. Rep. 482.

ALUMINUM COMPANY OF AMERICA—

Decision of National Board

In re Aluminum Company of America, Massena Works, *and* Aluminum Workers Union of America, Local 19256 (AFL); Case No. 111-3223-HO, June 13, 1945 (made public Aug. 1, 1945).

WAGE ADJUSTMENT—Reduction of incentive rate—Improved machinery—Retroactive date

Company is not entitled to reduce disputed incentive rate by 21 per cent but is entitled to reduce it by 7 per cent in accordance with hearing officer's finding that 7 per cent reduction is justified by improvements made in machine involved. Company's petition for review of Regional Board's order is denied.

Effective date of directed decrease in incentive rate should be date agreed upon by parties. Regional Board's order setting date one week earlier is amended accordingly.

For other rulings see Index-Digest 225.764, 260.130, and 225.346 in this or other volumes.

Majority decision of Board amending decision of Regional Board II (New York). Public members concurring: Dexter Keezer and Nathan P. Feinsinger. Labor members concurring: Raymond McCall and Neil Brant. Employer members dissenting on Par. II: William Maloney and Charles S. Roberts.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted, in so far as it relates to retroactivity, the petition filed by the company for review of the Second Regional War Labor Board's directive order of Feb. 1, 1945, as amended Mar. 8, 1945, and having reviewed the merits of the case with respect to this issue, hereby orders:

I. The Second Regional War Labor Board's directive order of Mar. 8, 1945, is modified to provide that the date of retroactivity of ordered wage adjustments shall be Feb. 8, 1945, as agreed to by the parties.

II. The remainder of the petition for review is denied.

Amendment to Directive Order of Regional Board II (New York)

Mar. 8, 1945

The Regional War Labor Board for the Second Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, acting upon the joint request of the parties, hereby affirms and amends its directive order of Feb. 1, 1945, by vacating Par. 2 of the said order and substituting the following provision:

Effective Date

Adjustments resulting from the provisions of this directive order shall be effective as of Feb. 1, 1945.

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall become operative eight days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Signed by Thomas L. Norton, Paul F. Brissenden, Walter Gellhorn, and Howard Lichtenstein, public members; James Edgar, Peter K. Hawley, James C. Quinn, and Benjamin Riskin, labor members; and Howell Barnes, Jr., J. J. Clark, George LeSauvage and John A. Zellers, employer members, subject to dissent on denial of company's petition for reconsidering of the rate for carbon cleaning machine operators.

Directive Order of Regional Board II

Feb. 1, 1945

The Regional War Labor Board for the Second Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Incentive Bonus

The company shall establish an incentive standard for cleaning carbons which will pay $1.60 per hour for the production of 447 carbons per hour; provided, however, that this approval shall not be used as a basis for any

future claim of intra-plant inequities in the plant.

2. Retroactivity

Adjustments resulting from the provisions of this directive order shall be effective as of Nov. 18, 1944.

The procedure to be followed in making the retroactive adjustments to the employees who have either quit or been discharged shall be in accordance with the resolution of the National War Labor Board of Apr. 2, 1943 [26 War Lab. Rep. 3].

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall become operative 15 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall become operative, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order immediately operative.

Signed by Paul F. Brissenden and John W. McConnell, public members; Harry A. Clark and Andrew S. Ormsby, employer members, subject to dissent on incentive standard; and Benjamin Riskin and Fraser L. Holzlohner, labor members, subject to dissent on retroactivity.

Report of Technical Advisor

Dec. 13, 1944

INCENTIVE STANDARD

Background

In a letter dated Nov. 22, 1944, Mr. Saul Travin gave the undersigned a brief resume of the above case and stated that the parties had requested the Board to appoint a technical advisor to assist them in negotiating an agreeable standard. The undersigned was appointed to this duty.

The advisor arrived at the company's Massena plant at 9:30 a.m. Dec. 9, 1944, and, accompanied by representatives of the parties, observed the operations in the issue being performed and timed the cleaning of 50 carbons. Particular note was taken of the effort and efficiency of the men as well as the conditions under which they worked.

A conference then took place in the offices of the company.

The advisor then requested the positions of the parties on the issue and found them to be as follows:

The company was proposing a new incentive standard which would pay $1.37 per hour to each of four men in the group for producing 447 pieces per hour.

The union was willing to accept the recommendation of Mr. Walter Brower, hearing officer in Case 2-HO-510, for an incentive standard which would net the men $1.60 per hour each, for 447 pieces.

No compromise had been considered, and both sides stated that they contemplated no concessions to reach a settlement.

It became necessary, therefore, for the advisor to present his own view of the situation.

Prior to the meeting, the advisor had studied a very complete and factual statement of position prepared by the company, giving a history of the operation of carbon cleaning together with earnings on the operation since June 1937.

This brief explained certain improvements to the equipment which had taken place since 1937, but no figures were given as to the specific effect of these improvements on the time required to clean a carbon.

During the discussion it was confirmed that no such figures were available. This is understandable as such figures are difficult to obtain and interpret, particularly where the improvements consist of an evolution in various steps of the operation rather than major changes affecting the operation in its entirety.

Discussion

The result of this, however, was that the extent of the downward revision in the incentive permissible under Sec. (b), Subsection (1), of General Order No. 38 [20 War Lab. Rep. LIII; WCDS 164] could not be arrived at by the most accurate method,

which would be by removing from the standard an increment proportional to the specific time saved by the improvements.

Comparison of earnings for various periods, while giving rise to logical assumptions as to effects of improvements, prove nothing because the question may always be asked, "what was the efficiency and effort put forth by the workers during those periods to attain those earnings?" There is no way of answering this question.

The advisor is accordingly basing his view of the problem at hand primarily on the results of his timing of the production of 50 pieces. The 50 pieces were produced in exactly 7 minutes.* This would be at a rate of 430 pieces per hour or 3½ per cent less than the 447 used as a basis for Mr. Brower's recommendation and the company's proposal.

The following table shows the relationships between the existing rate, that proposed by the company, and that recommended by Mr. Brower in terms of money paid the individual workman per piece produced:

Rate	Amt.	Per cent Cut
Existing Rate	$.00387	
Mr. Brower's Recommendation.	.00358	7
Company's Proposal .	.00306	21

On the basis of his timing and observations, the advisor believes Mr. Brower's recommended rate to be equitable to both sides. Earnings of $1.60 per hour for producing 447 carbons are no windfall for the workers, but well earned. The advisor believes that, if a standard were to be set on the operation today, with no prior experience with the productivity of the men, it would be no less favorable to them than Mr. Brower's recommendation.

It is easy for high piecework earnings to throw issues out of focus. The trouble is that the high earnings are superficially compared with normal daywork earnings for the class of work. Only by knowing how much effort and efficiency are required to obtain those high earnings, can the justice of the earnings be judged.

The operations in this issue involve a crew of four men. At two stations in the operation, heavy physical effort is required and at two others, moderate effort. The men rotate between the stations.

It is customary for labor of this kind to be accorded a substantial incentive or bonus factor for sustained production. It is customary also to provide a sizable rest and delay allowance.

Accordingly, if the men are willing to go all out for high earnings and deny themselves the rest they are entitled to, it is not at all uncommon to find very high piecework earnings relative to day rates.

The advisor, therefore, believing Mr. Brower's recommended standard was equitable to both sides and that the advisor himself would not have recommended less, and the union having already accepted Mr. Brower's recommendation, strongly advised the company also to accept the rate.

The company however was unwilling to agree to it. The advisor called the company on the phone today, Dec. 13, 1944, and Mr. Whitzel advised that they still do not wish to accept it.

On the basis of Mr. Brower's recommendation, direct labor cost to the company will be $\frac{\$1.60 \times 4}{447}$ or $.0143 per carbon.

Prior to the installation of Machine No. 2, the direct labor cost was $\frac{\$1.73 \times 5}{447}$ or $.0194 per carbon.

The company is therefore effecting a saving of 26 per cent from the improvements claimed for Machine No. 2. The major part of this saving is due to the elimination of the need for one man in supplying carbons to the main conveyor, resulting from use of a tilting feed table and pusher.

RECOMMENDATION

Since the advisor sees no indication that the deadlock between the parties has been altered by his services, and, in order to bring the matter to a close, he recommends:

That the company be directed to establish an incentive standard for cleaning carbons which will pay each of four men $1.60 per hour for a production of 447 carbons per hour (and proportional for other amounts) as recommended by Mr. Walter Brower in Case No. 2-HO-510 involving the same issue.

Signed by Scott B. Mason, technical advisor for the Board.

* This was duration of actual timing. Observation of the men at work consumed about 25-30 minutes.

POLK SANITARY MILK CORP.—

Decision of National Board

In re POLK SANITARY MILK COMPANY [Indianapolis, Ind.] *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, BAKERY, LAUNDRY, DAIRY EMPLOYEES AND SALES DRIVERS, LOCAL 188 (AFL). Case No. 111-1826-D, July 17, 1945 (made public Aug. 15, 1945).

JURISDICTION OF BOARD—Substantive limitation—Union-security issue involving unrecognized union

Uncertified and unrecognized union claiming to represent employees of intrastate concern is not entitled to maintenance of membership or check-off since it is against Board policy to determine union-security issues involving union which has not been certified or recognized as bargaining agent. Regional Board's award of such provisions is vacated.

For other rulings see Index-Digest 82.944, 82.500, 110.281, and 20,865 in this or other volumes.

GRIEVANCES—Unrecognized and uncertified union — Establishment of grievance procedure — Grievances arising under directed conditions

Uncertified and unrecognized union claiming to represent employees of intrastate concern is entitled to establishment of grievance machinery under which employees may be represented by union steward in presentation of grievance and by union committee in further processing thereof. Grievances recognizable under procedure, however, are only those relating to interpretation or application of directed terms and conditions of employment, and Regional Board's order establishing procedure is amended accordingly.

For other rulings see Index-Digest 60.105 185.500, and 60.220 in this or other volumes.

Majority decision of Board amending directive order of Regional Board VI (Chicago). Public members concurring: Jesse Friedin and Nathan P. Feinsinger. Employer members dissenting on Par. I: Robert J. Watt and David R. Stewart.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted in part the petition filed by the company for review of the directive order dated Mar. 28, 1945, of the Regional War Labor Board for the Sixth Region in the above entitled case and having reviewed the merits of the case with respect to maintenance of membership and check-off and grievance procedure, hereby decides the dispute between the parties and orders :

I. Maintenance of Membership and Check-Off. Par. 9 of the said directive order which relates to this issue is hereby vacated.*

II. Grievance Procedure. Par. 7 of the said directive order which relates to this issue is hereby affirmed with the following modification:

Grievances recognizable under this procedure are those which relate to the interpretation or application of the terms and conditions of employment set forth in the directive order of Mar. 28, 1945, as modified.

III. Arbitration. The company's petition for review of this issue is hereby denied, and the National Board assumes jurisdiction of the issue. The matter is disposed of by the provisions of Par. II above.

IV. The remainder of the company's petition for review is hereby denied.

Directive Order of Regional Board VI (Chicago)

Mar. 28, 1945

I. The Regional War Labor Board for the Sixth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 3, 1942, the War Labor Disputes Act of June 25, 1943, and the directive order of the National War Labor Board dated Sept. 6, 1944, [19 War Lab. Rep. 81], hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties as follows:

---

* ED. NOTE: The award of union security was vacated since the Board will not order union security in a case where the union has not been certified or recognized as the bargaining agent of the employees. (Board Press Release B-2197.)

1. Continuation of Present Bonus Plan

The company shall continue present practice with respect to the bonus paid sales drivers and with respect to the distribution of free milk, for the period of any collective bargaining agreement into which the parties may enter or until further order of the Board.

2. Wage Increase

The union's request for a wage increase of four ($4.00) dollars per week is hereby denied.

3. Wage Scale

The wage scale now in effect shall be continued unless changed by the terms of any collective bargaining agreement into which the parties may enter or until further order of the Board.

4. Overtime

The union's request for payment of time and one-half after forty (40) hours of work in any regularly scheduled workweek is hereby denied.

5. Vacations

(A) Effective for the 1944 vacation period, the present vacation practice shall be modified to provide that all employees having one or more but less than five (5) years of service with the company shall receive one (1) week's vacation with pay, and all employees having five (5) or more years of service with the company shall receive two (2) weeks' vacation with pay.

(B) The company shall continue past practice with respect to the method of computing each week of vacation pay as follows:

Forty-eight (48) times the hourly rate for inside workers, and the average weekly earnings computed on the basis of the thirteen (13) four-week periods immediately preceding the vacation period for sales drivers.

6. Shop Steward

The union shall be entitled to two (2) stewards in the plant, one to represent the inside workers and one to represent the sales drivers. These stewards shall have the duty of assisting those employees who may desire their services for the processing of grievances in accordance with the grievance procedure set forth in Par. 7 below.

7. Grievance Procedure

(A) Grievances shall initially be taken up by the employee or by the union steward or by both, as the employee elects, with the employee's supervisor. An employee who elects to be represented by the union steward in Step A, shall be represented by the union in all of the following steps of the grievance procedure.

(B) If a mutually satisfactory settlement of the grievance is not effected within twenty-four (24) hours after presentation to the employee's immediate supervisor, the grievance shall be set forth in writing by both parties and taken up with the plant committee, which shall consist of not less than two (2) or more than three (3) representatives of the company. An employee who elected to be represented by the union in Step A, shall be represented in Step B by the shop grievance committee which shall consist of the union steward and at least one (1) but not more than two (2) other union representatives. Either party may request the presence of the aggrieved employee at any meeting at which the grievance is discussed.

(C) If the parties are unable to arrive at a mutually satisfactory settlement of the grievance after two (2) meetings have been held under Step B within seven (7) days, both parties shall prepare a written statement of their respective positions. The grievance shall then be submitted by the shop grievance committee for such employee who previously elected to be represented by the committee, to the chief executive of the plant. Either party may request the presence of the aggrieved employee at any meeting at which the grievance is discussed.

8. Arbitration

The issue involving arbitration as the final step in the grievance procedure is hereby referred to the National War Labor Board for final disposition.

9. Union Security and Check-Off

"(A) All employees who, 15 days after the date of this directive order, are members of the Union in good standing in accordance with its constitution and by-laws, and all employees who become members after that date, shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the Regional War Labor Board and the Company with a notarized list of its mem-

bers in good standing as of that date.

"The Union, its officers, and members, shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"The Company, for said employees, who may submit individually signed authorization cards, shall for the duration of the contract between the parties, deduct from their first pay of each month the union dues for the preceding month and promptly remit same to the appropriate officer of the Union. The initiation fee of the Union shall be deducted by the Company and remitted to the appropriate officer of the Union in the same manner as dues collections.

"(B) If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by the Regional War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"(C) If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties or, if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, the arbitrator will be selected by the Regional War Labor Board on due application. The decision of the arbitrator shall be final and binding upon the parties."

(D) Any party desiring to post or otherwise publish an explanation of the foregoing maintenance-of-membership provision shall post or otherwise publish the official explanatory statement approved by the National War Labor Board on Nov. 26, 1943 [12 War Lab. Rep. XXVIII; WCDS 321]. This statement may be posted or otherwise published by either of the parties or by both jointly, but shall, in any event, be the only statement which may be posted or published unless the parties otherwise agree in writing. The procedure for administering the maintenance-of-membership clause shall be in conformity with the procedure approved by the National War Labor Board on Nov. 26, 1943, unless the parties otherwise agree in writing.

II. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 14 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board through the Sixth Regional Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree. However, the date of the escape period fixed in Par. 9(A) of this directive order granting maintenance of membership shall not be affected or stayed by the filing of a petition for review of that or any other provision of this directive order. Notwithstanding any other provisions of this paragraph, that part of this directive order which continues in effect the terms and conditions of a prior contract which has expired or has been otherwise terminated, shall not be suspended or stayed by the filing of a petition for review but shall be effective according to its terms unless and until the Board, upon consideration of a petition for review, otherwise directs.

III. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board through the Sixth Regional Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order immediately effective.

Signed by John D. Larkin and Philip Marshall, public members; Howard D. Grant and J. A. Powers, employer members, subject to dissent on grievance procedure, maintenance of membership and check-off, retroactivity, and two union stewards in plant, Mr. Grant also dissented on the vacation provision; and Samuel C. Evett and Rudolph Faupl, labor members, subject to dissent with respect to denial of overtime after 40 hours and a $4.00 increarse per week, Mr. Faupl also dissented on vacation provision.

Report and Recommendations of the Panel *

Jan. 19, 1945

PARTIES TO THE DISPUTE

The Polk Sanitary Milk Company is a milk distributor engaged in processing milk and milk products and selling them in Indianapolis. Its business is entirely intrastate. It is the largest distributor of milk in the city, supplying about 20 per cent of the total volume consumed in that community. The company employs approximately 253 workers, of whom about 90 are inside workers, the balance being employed as sales drivers.

The above entitled union † was granted a charter by the International Brotherhood of Teamsters on or about Aug. 31, 1942. This local now has a membership of 600 or 700.

BACKGROUND

The union started negotiations with the company in March and early April 1943. At that time the company offered to grant recognition for union members only. The union petitioned the National Labor Relations Board for certification, which petition was denied on the ground that the company was not engaged in interstate commerce. The dispute between the parties on a labor contract was certified to the National War Labor Board on June 2, 1943. This dispute involved seven issues: (1) Recognition of the union as bargaining agent; (2) wages; (3) continuation of the present bonus plan; (4) vacations; (5) provision for shop steward; (6) maintenance of membership; and (7) check-off of union dues and initiation fees.

On Jan. 18, 1944, the Regional War Labor Board held a hearing on the issue of representation. On Mar. 22, 1944 [15 War Lab. Rep. 487], this Board issued a directive order declining jurisdiction. The union then filed a petition for reconsideration with the Regional Board, and a petition for review with the National Board, and the company filed answers. On May 17, 1944, the National War Labor Board ordered the case referred back to the Regional Board for reconsideration of the issues in the dispute originally certified to this Board on June 2, 1943. Thereupon, the Sixth Regional War Labor Board issued an order on June 29, 1944, directing the parties to negotiate for a period of 30 days. The company refused to negotiate and filed a petition for reconsideration and review. This petition was vacated. On Sept. 6, 1944, the National War Labor Board handed down a directive order returning the case to the Regional War Labor Board with instructions to fix the terms and conditions of employment with respect to presently disputed issues, not including the issue of representation.

After the Regional War Labor Board's denial of jurisdiction on Mar. 22, 1944, and the enunciation by the National Board of a policy relative to jurisdiction over disputes involving firms engaged in intrastate commerce, the union withdrew the issue of representation from the dispute by letter. It also filed a request for permission to take a strike vote, which was granted. No strike took place, however, since only 59 out of the 241 eligible employees favored such action. Pursuant to the National War Labor Board's directive order of Sept. 6, 1944, the dispute was finally assigned by the Regional Board to a panel which held hearings in Indianapolis on Oct. 30 and Nov. 3.

ISSUES

The issues before the panel are as follows:

I. Continuation of the Present Bonus Plan
II. Wages,
III. Vacations,
IV. Provision for a Shop Steward,
V. Union Security
VI. Check-Off, and
VII. Retroactivity.

[ED. NOTE: Issues 1 through 3, discussed in the panel report at this point, are omitted.]

IV. Provision for a Shop Steward

Union's Position

The union desires the following provision:

"The Union may appoint a steward to represent the Union. Notice of such appointment of steward or change in appointment of steward shall be given to the employer in writing by the Union. The employer shall in no way discriminate against a steward because of his position. It is further understood that said steward shall have no authority to call a strike or to cause a stoppage of work."

* ED. NOTE: Only that portion of the panel report relating to provision for a shop steward, union security, and check-off is reproduced.

† ED. NOTE: Bakery, Laundry, Dairy Employees and Sales Drivers, Local 188.

In a discussion of its proposal, the union states that in this plant it would appoint two stewards, one for inside workers and one for sales drivers. The desired clause is a standard one and should be approved by the Board since the union has the right to be represented by stewards. Such representation is but a normal aspect of labor relations where a union exists. The requested clause is stronger than that in other contracts in its provision against a stoppage of work by the steward. Without the requested provision, the union has no way of handling grievances in the plant.

Company's Position

Since the union is not recognized by the company, it can hardly insist on placing a shop-steward clause in the contract or in the Board's order. Such a clause is highly inappropriate because the union is neither certified nor recognized. Under these circumstances, the War Labor Board has no jurisdiction or authority to order such a provision to be included in the relations between the parties. As to the present practice of handling grievances, the company states that the grievance is first taken up through the worker's immediate supervisor. If another step is necessary, the employee may go to the head of the company.

Discussion

Whether the union is certified or recognized or not, it does exist in this plant, and its members should be entitled to appoint representatives whose assistance they may seek in settling their grievances. The panel does not believe that this opinion is inconsistent with the uncertified status of the union. Members of the union are in fact employed by this company and in normal circumstances, although especially in wartime, disputes and differences taking the form of grievances will inevitably arise. Some sort of procedure for the handling of these grievances is called for. Orderly and peaceful labor relations can certainly be promoted by the creation of such a procedure. Consequently, the panel will not only recommend a provision for shop stewards but a grievance procedure specifying their function and culminating in arbitration. The panel believes that its function is to make recommendations based upon findings of fact, which will not only settle the current dispute, but provide a basis for preventing disputes which might otherwise arise in the future. To this end, it proposes a simple procedure which is generally recognized and which promises to be effective in the company's present establishment.

Recommendations

1. The union shall be entitled to two stewards in the plant, one to represent the inside employees and the other to represent the sales drivers.

2. Within three working days after a grievance first arises, the aggrieved employee shall present his grievance to his immediate superior for settlement.

3. If the grievance is not settled by the first step, it shall be submitted in written form, not later than seven days after the first step has been exhausted, by the employee with or without the assistance of the union representative, to the plant committee, whose membership shall consist of not less than two or more than three representatives of the company.

4. Should the grievance still remain unsettled, not later than seven days after the second step has been concluded, the grievance shall be presented by two employees or union representatives, if the employee is a union member, to the chief executive of the company and the plant committee.

5. If the grievance remains unsettled after the third step has been taken, it shall be submitted for arbitration to an arbitrator to be chosen by the parties. The arbitrator's decision shall be final and binding upon the parties. The expenses of the arbitration proceedings shall be shared equally by the parties.

V. Union Security

Union's Position

The union requests the standard maintenance-of-membership provision frequently ordered by the Board. It believes such a provision is necessary in order that it may have a means of controlling its members, commensurate with its responsibilities. During the long delay, now approaching two years, involved in the union's attempt to secure recognition and a contract, the union has consistently adhered to its no-strike pledge. At the same time, the company has consistently refused to recognize and to sign a contract with the union. This delay has "dissipated the union's membership" and placed it under considerable tension. Both

as a recognition that the union has demonstrated its responsibility and as a practical means of stabilizing labor relations so that the regular distribution of milk to the community might not be seriously interrupted, maintenance of membership should be granted in this case. The regular distribution of milk is essential to the effective prosecution of the war, the union believes.

Further, the by-laws of the union, it is asserted, provide for a democratic procedure in connection with the treatment of a union member against whom charges of misconduct have been brought. He is provided with representation before the trial board. He is also given the right to appeal to the Executive Board of the international body and to present his case to the local union membership for decision by a majority vote of the membership. The union also argues that it needs maintenance of membership as a protection against the company's attacks upon it. A company official with responsibility for hiring new employees is alleged to have said, "We don't want a union in here, and we are not going to have one." This statement is said to indicate the attitude of opposition to the union which threatens its security.

Company's Position

The Regional War Labor Board has no jurisdiction over this issue. In the case of Chicago Social Agencies and the United Office and Professional Workers of America (CIO), Case No. 111-3504-D, the Regional Board on Oct. 27, 1944, declined to take jurisdiction over the issues of recognition, maintenance of membership and check-off. Hence this and related issues of shop steward and check-off do not properly come before this Board. The company has a policy which permits both union and non-union employees to work for it on an equal basis. There is no discrimination whatsoever, hearsay testimony of the union to the contrary notwithstanding.

The company refuses, however, to recognize this union and to sign a contract with it, although it expresses its willingness to confer with it on matters pertaining to working conditions exclusive of the subjects of recognition and union security. In the past, the company has had unfortunate experiences with the Teamsters Union and the International Union with which this local is affiliated. Even though the present local was not in existence when a 77-day strike took place in 1939, certain of its members were previously members of the local taking part in that strike. Certain names are cited by the company to prove this point. The company believes that its open-shop policy is in line with the general practice in the city of Indianapolis, certainly as far as the fluid milk distribution industry is concerned.

Discussion

As to the propriety of its denial of the company's request to delete this issue and the issues of check-off and provision for a shop steward from the list of issues to be heard, the panel merely refers to the terms of the directive order handed down by the National Board on Sept. 6, 1944, directing the Regional Board to "fix the terms and conditions of employment with respect to presently disputed issues, not including the issue of representation." This order clearly directs the Regional Board and its panel to deal with all of the issues except that of representation. Further, matters pertaining to the appointment of a shop steward, maintenance of membership and check-off, while closely connected with the status and functioning of the union, are also related to "terms and conditions of employment." The standard maintenance-of-membership clause itself requires a union member to maintain his membership as a condition of employment. The panel majority, therefore, believes it is adhering to the terms of the National Board's directive order in hearing and making recommendations on the above named issues.

Of paramount importance in deciding the question of maintenance of membership is the possible use of this provision as a substitute for economic force in relationships between the parties. In the instant case, the union is neither recognized by the company nor certified as bargaining agent by a state or national agency. This situation, far from supporting a denial of maintenance of membership, might well be an argument in favor of it. The fact remains, whether there is recognition or not, that the union does exist in this plant, and its stability obviously will make at least some difference in the operations of the company. If stabilization of the union's position is affected by a Board order requiring maintenance of membership,

the status of the union and the members whom it serves will be fixed for the period covered by the order. Discontent among the union members could result from the company's refusal to sign a contract. This discontent could endanger the union's position and take the form of overt action, which the union might not always be able to control unless the means afforded by maintenance of membership were available.

There has been no showing of irresponsibility with respect to this union. On the contrary, the facts indicate that the local involved in this dispute has a good record. This is affirmed even though a work stoppage lasting 77 days in 1939 did involve the predecessor of this particular local and the Teamsters Union with which both were affiliated. Of more significance than this stoppage in which this local was in no way involved is the fact that, since March 1943 the union has consistently utilized legal procedures instead of other means during the involved and prolonged presentation of its case before governmental agencies.

Finally, the company's contention that the Board has no jurisdiction over this and related issues is not well taken by the panel. The War Labor Board has asserted its authority to take jurisdiction even in those cases where the company is not engaged in the production of war materials but where labor disturbances might destroy the effectiveness of the company's operations so that civilians would not receive required goods. (1 War Lab. Rep. 280, 284-287). While this decison deals with civilian goods, its meaning might readily be expanded to include civilian food supplies, such as milk. This declaration by the Board of the inclusive character of its jurisdiction in wartime takes into account the close and vital relationship which all parts of our economic order sustain to one another. A disturbance in the processing and distribution of milk by this company, which supplies about 20 per cent of all the milk distributed in Indianapolis, would be a potential threat to the war effort both through direct interruption of milk deliveries and through the tendency of labor disturbances to become general. The reasoning and facts cited above by the panel lead it to conclude that maintenance of membership should be granted.

Recommendation

The majority of the panel recommends that the standard maintenance-of-membership provision with the 15-day escape clause be ordered by the Board.

VI. Check-Off

Union's Position

The union requests voluntary irrevocable check-off in the usual form ordered by the Board. Employees report to work at varying hours so that collection of dues is difficult. Attempts to collect dues on the job are disruptive of production efficiency. While an Indiana statute prohibits wage assignments, as brought out in the hearing, such statutes are superseded by the orders of the War Labor Board, which have directed the check-off in states prohibiting it.

Company's Position

The company opposes the check-off for the reasons which govern its opposition to maintenance of membership. By cross-examination of a union witness, the company brought out the fact that the union has only one contract in the Indianapolis fluid milk industry providing for the check-off, namely, the Capitol Dairies, and also the fact that it was denied by the Board in the Weber Milk Case [17 War Lab. Rep. 361].

Discussion

The voluntary irrevocable check-off requested by the union provides a simple method of maintaining union membership in good standing and should be ordered unless exceptional circumstances direct otherwise, whenever maintenanec of membership is ordered. Some difficulty in collecting dues can reasonably be expected when drivers report for duty and complete their routes at different hours. The company failed to argue that its clerical work would be measurably increased and complicated under the check-off provision.

Recommendation

The majority of the panel recommends that the Board order the usual voluntary irrevocable check-off provision.

[ED. NOTE: Issue 7, discussed in the panel report at this point, is omitted.]

Signed by Otto J. Baab, representing the public; F. D. Wallace, representing employers, subject to dissent with opinion on Issues III, V and VI; and John Heil, representing labor, subject to dissent with opinion on Issues II and III.

Dissenting Opinion of Employer Member

[ED. NOTE: Issue III, discussed in the opinion at this point, is omitted.]

V. and VI. The industry member dissents from the panel's recommendation that standard maintenance-of-membership and check-off provisions be ordered by the Board. Since the union does not exist as a legally constituted bargaining agent for the company's employees, there can be no contractual relations between the company and the union. Therefore, there can be no contractual obligations of the company to the union. Further, the theory of maintenance of membership and check-off is designed to hold secure the bargaining status of duly recognized bargaining agencies against the uncertainties of war times. In this case there is no recognized bargaining status to hold secure. It is highly improper for the panel to recommend and for the Board to issue a directive obligating the company to aid the union in maintaining its members in good standing and collecting its dues and assessments.

Signed by F. D. Wallace, representing employers.

FAFNIR BALL BEARING CO.—

Decision of Regional Board I (Boston)

In re FAFNIR BALL BEARING COMPANY [New Britain, Conn.] *and* UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 133 (CIO). Case No. 111-13949-D, Aug. 1, 1945.

DISCHARGE AND REINSTATEMENT
Union activity on company property

Company was justified in discharging union member who, during rest period, conducted mass meetings at which company was attacked and ridiculed and, who, on several occasions, came late to work with excuse that he had been distributing union leaflets. Though union contended discharge was unfair labor practice, NLRB official refused to issue complaint in view of fact that company did not object to discussions during rest periods among small groups of workers but only to "organized aspects" of gatherings which employee in question conducted.

For other rulings see Index-Digest 46.245 and 172.600 in this or other volumes.

Majority decision of Regional Board I (Boston) affirming recommendations of panel. Public members concurring: Saul Wallen, James J. Healey, Oliver W. Branch, and E. Robert Livernash. Employer members concurring: F. M. Eaton, Charles R. Gow, Clarence G. McDavitt, and George H. Reama. Labor members dissenting with opinion: Frank M. Heavey, Michael J. Walsh, Jeremiah A. Linehan, and Henry Steinfeld (opinion by Daniel J. Gallagher).

Directive Order

The Regional War Labor Board for the First Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties.

I. Discharge Dispute

The Board adopts the panel recommendation holding that Greenberg's discharge by the company was justified and makes it the order of the Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect fifteen (15) days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Report and Recommendations of the Panel

June 28, 1945

PARTIES TO THE DISPUTE

The Fafnir Bearing Company is a corporation with its office and plant in New Britain, Conn., and is engaged in manufacturing ball bearings, 100 per cent, for the Army, Navy, and Air Force.

The employee is represented by United Automobile, Aircraft & Agricultural Implement Workers of America, Local 133 (CIO).

BACKGROUND

The union was certified Mar. 1, 1943, as the bargaining agent, and on Apr. 12, 1943, an interim grievance procedure was set up during the bargaining for the agreement, which contract was executed Apr. 12, 1944. On Jan. 12, 1944, Martin Greenberg was discharged.

The issue involved in this case concerns the discharge of one Martin Greenberg on Jan. 12, 1944. In order to obtain a clear picture of the background, it might be well to review what has previously gone on prior to this hearing. In December of 1943, the union had filed charges with the National Labor Relations Board maintaining that the company was discriminating against Greenberg because of his union activity, which complaint was investigated by the National Labor Relations Board. A conference was held on Oct. 20, 1943, after which a representative of the National Labor Relations Board advised the parties that there was no apparent violation of the Wagner Act and made suggestions for future conduct. On Jan. 12, 1944, Greenberg was discharged. In January 1944, the case was investigated by Conciliation Commissioner Caffray; in May of 1944, an investigation was made by Commissioner Truax; in August of 1944, an investigation was made by Commissioner DeCantillon. No final resolution of the issues was effected as a result of conferences with the three previously mentioned commissioners. On Oct. 5, 1944, this case was certified to the National War Labor Board, which declined to take jurisdiction on the basis that the matter was one for the National Labor Relations Board and that the discharge took place prior to the contractual relationship between the company and the union. The union, on Dec. 12, 1944, petitioned the New Case Committee of the National War Labor Board to reconsider its action. The Board assumed jurisdiction, and the case was then referred to this Regional Board. Subsequently on Apr. 25, 1945, a show-cause hearing was held by the Regional Board on the question of why the case should not be referred to arbitration under the provisions of the existing contract, at which hearing the company objected to the jurisdiction of the Board. As a result of the hearing, the Board referred to this panel the three questions included under the heading "Issues."

ISSUES

This panel was set up to determine the following questions propounded by the War Labor Board:

1. Did Greenberg have a right to a determination on the merits of the discharge under the interim grievance procedure?

2. Does Greenberg have a right to a determination on the merits of the discharge under the contract now in existence?

3. If Greenberg has a right to a determination on the merits of his case, shall he be reinstated or denied reinstatement? If he is reinstated, shall he be compensated for loss of income?

At the hearing it was agreed between the company and the union that the answers to the first two questions are in the negative.

ARBITRATOR

Company's Position

In view of the fact that it has been agreed that the answers to Questions No. 1 and 2 are in the negative, the company feels that the panel should not pass upon the merits of the case for the reason that Greenberg was discharged between Apr. 12, 1943, the date that the interim grievance procedure was set up to remain in existence until the execution of the collective bargaining agreement, and Apr. 12, 1944, the date that the agreement was actually executed. The interim grievance procedure which became effective on Apr. 12, 1943, did not provide for arbitration; therefore, Greenberg had no right under this procedure to a determination on the merits of his discharge. Although the contract between the parties did provide for such a procedure, Greenberg had been discharged prior to the execution of the contract. Therefore, since Greenberg

was not in the employ of the company when the agreement of the parties was executed, the company takes the position that the terms of the contract do not apply to Greenberg, and he did not have the right to a determination on the merits of his discharge under the contract.

Union's Position

The union contends that, although the interim grievance procedure provided for a determination of a grievance, it did not establish a method for final determination, and, in view of the absence of any contract at the time of the Greenberg discharge and the absence in the interim grievance procedure of a provision for final determination, the grievance should be determined by the War Labor Board under its resolution providing for arbitration of grievances arising between companies and unions where no arbitration machinery exists.

Discussion

The panel, upon the joint request of the parties, sought to determine the intent of the Board in the phrasing of the three questions propounded by it as issues for panel action. A telephone call to the Disputes Division in Boston elicited no Board interpretation. Although the director of the division, under the urging of the panel, gave his personal view, he specifically advised the panel that the entire interpretation of the three questions propounded by the Board was the exclusive function of the panel. The panel therefore conferred to consider the matter and ruled that the Board intended the third question to be answered only if the answers to either of the first two questions were in the affirmative. The panel reasoned that otherwise the Board would have had no need for propounding the first two questions as well as the first phrase in the third question.

Having been advised that such matters were to be handled solely by the panel, when the parties further inquired as to the Board's intent in the use of the word "determination," the panel conferred and ruled that the Board meant determination by an impartial arbiter.

This discussion becomes somewhat academic since the panel, as hereunder appears, entertained argument on the merits of the discharge so as not to foreclose the union's contention that the Board intended Question 3 not to be predicated on the answers to Questions 1 and 2. A consideration of the third question as requested by the union has the same result as the panel's application of negative answers to the first two questions, i.e., no reinstatement.

A majority of the panel are of the opinion that, if the answers to Questions No. 1 and 2 are in the negative, Greenberg is not entitled to a determination on the merits of his case before this panel. In view of the facts presented by both the union and the company, Greenberg is left without a remedy in so far as the interim grievance procedure and the contract of the parties are concerned, and the company was within its right in refusing to arbitrate Greenberg's discharge.

MERITS OF DISCHARGE

The union stated that the company should waive whatever defenses to arbitration it might have and arbitrate the case on the merits. The company refuses to do so. The union strenuously pressed the panel for a hearing and for a report of its findings and submission of recommendations on the merits of the grievance to the War Labor Board. In view of the past history of this case and the different channels the case has gone through without ever having a hearing on the merits, the panel unanimously decided to hear the merits and report their findings, together with a recommendation, to the War Labor Board with the desire to end this case. However, the findings and recommendations are reported to the War Labor Board for the express purpose of having a final determination on the merits of this case only if the War Labor Board feels that the panel should have heard this case on its merits after the answers to Questions No. 1 and 2 have been agreed to as being in the negative.

Company's Position

Between April and October of 1943, several warnings were given to Greenberg for violation of various rules and his refusal to work on a new job issued to him by the company, as a result of which Greenberg was laid off for one week, without pay. On Oct. 20, 1943, a mass meeting was held by Greenberg in his department during a paid rest period, at which meeting management was attacked and ridi-

culed. Greenberg was warned not to repeat this offense. On Jan. 8, another mass meeting was held by Greenberg in his department during a rest period, at which meeting there was a total of 55 people present, 20 of whom were sitting down and 35 standing around. At the conclusion of that meeting, Greenberg announced to the gathering that the next meeting would be at another date sometime in the future. Subsequently small signs were posted in the men's room notifying the employees of the next meeting. During this meeting various questions were propounded and answers were given, all the questions being addressed to and answered by Greenberg. Greenberg also rebuked the company and ridiculed its management. Greenberg was also in the habit of coming in one hour late every day. He was warned about this by the company, but, in spite of the warning, he continued to come in late and gave as a reason that he was distributing union leaflets.

Union's Position

The union states that Greenberg should be reinstated with back pay; that he had not violated any standing rules of the shop, not interfered with the production efforts of the company; that talking to employees during lunch and rest periods is not a violation sufficient to warrant a discharge; that Greenberg thought that he had a right to do what he did; that Greenberg is an important and active union leader; that he has been a stabilizing factor in helping to prevent actual and possible walkouts and strikes that were from time to time provoked by the company; that Greenberg's discharge did and may further affect the production efforts of the company and that his reinstatement will have a stabilizing effect on the labor relations in the plant and a good effect on the war production efforts.

Mr. Greenberg was active during the organizational drive prior to certification and was elected secretary-treasurer of the union and member of the union negotiating committee. He has been on two occasions reelected to positions with the union and presently holds the position of secretary-treasurer of the union and chairman of the shop committee.

Discussion

A majority of the panel, labor dissenting, is of the opinion that Greenberg's discharge by the company was justified for the reason that he has been guilty of the various offenses set out in the company discussion of the merits, most of which have been admitted by Greenberg in testimony before the panel. Greenberg in his attempt to justify his actions, offered various excuses which do not present themselves as reasonable to the majority of the panel.

The panel unanimously are of the opinion that, if the Board should go beyond the second question and rule that the merits of the Greenberg discharge should have been gone into by the panel, then, in the event that the minority panel recommendation should be adopted by the Board and Greenberg ordered reinstated, he should be reinstated without compensation for loss of income for the reason that he has been employed gainfully since his discharge with the exception of two or three days.

Signed by Louis L. Bobrick, representing the public; and George F. McDonough, representing employers, concurring with opinion. Daniel Gallagher, representing labor, dissented with opinion.

Concurring Opinion of Employer Representative

July 7, 1945

MERITS OF DISCHARGE

While it is true that, between April and October 1943 several warnings were given to Greenberg for violation of company rules, it should be brought out that in December 1943 the union complained to the National Labor Relations Board concerning the warnings given by the company to Greenberg for his conduct, particularly for the holding of meetings.

The complaint was investigated on Dec. 10, 1943, by Examiner Merrick, and on Dec. 15, 1943 Mr. Merrick sent a letter to the company and another letter to the union clearing the company of the charge that it had discriminated, however, advising that Greenberg should not hold organized meetings on company property. Then, when Greenberg persisted and again held organized meetings during the paid lunch hour, the company was within its rights in dismissing this man.

It is likewise noteworthy that at no time subsequent to the discharge of Mr. Greenberg did the union file a

complaint with the National Labor Relations Board.

Signed by George F. McDonough, representing employers.

Dissenting Opinion of Labor Representative

July 20, 1945

The undersigned dissents from the opinion of the majority of the panel in the above case on both issues.

ARBITRATION

The undersigned feels that the instructions of the Board did not mean that, if the answers to 1 and 2 of the propounded questions are answered in the negative, therefore, the answer to Question 3 must be in the negative. The union from the very beginning has contended before the National War Labor Board that it has no right to a determination of the issue either under the interim grievance procedure or under the provisions of the contract, and for that reason the union's only recourse was its application for relief to the National War Labor Board. If the union felt that it had a recourse under the provisions of the grievance procedure or under the provisions of the contract, it would not have resorted to the National War Labor Board.

The National War Labor Board, having certified the issue and having sent it to the Regional War Labor Board for processing, has fully determined the issue of jurisdiction, and the only question before the Regional War Labor Board and the panel was a determination of the issue on the merits.

It is the opinion of the undersigned that, although the propounded questions of the Regional Board seem vague and confusing, yet they could only mean one thing, that is, that, if the answers to 1 and 2 were in the affirmative, in such event the issue be sent back to be processed under whichever of the two questions it would come. If, however, Greenberg had no right to a determination under any of the first two propounded questions, then his proper place was before the War Labor Board and that the War Labor Board was then the proper authority to go into the merits of the case.

MERITS OF DISCHARGE

The undersigned further feels that the wrong interpretation placed by the majority of the panel on the propounded questions of the Regional Board has led it to superficially, review the evidence and arrive at a wrong estimate of the merits.

The majority of the panel, in sustaining the discharge of Martin Greenberg, seems to have arrived at its conclusion on the theory that the discharge was for cause and was, therefore, justified.

The undersigned respectfully disagrees with the opinion arrived at by the majority of the panel members.

The evidence introduced at the panel hearing shows that Mr. Greenberg was a good worker and that he contributed greatly in preventing labor disturbances and in trying to establish proper labor relations, a thing which is of utmost necessity in the war production efforts. Once, when the other employees of his department went out on strike in protest against the company's actions, he kept on working. For such behavior, Greenberg should have been commended and not discharged.

The evidence shows that Greenberg was talking to his co-workers during his lunch period, and, when he was first threatened with discharge for continuation of such discussions or talks, he filed charges with the National Labor Relations Board. A field examiner of the National Labor Relations Board met with the parties and expressed his opinion that what Mr. Greenberg did was not improper, and, in fact, he assured the union that the company would not interfere with Mr. Greenberg's rights to discuss unionism or other matters with his co-workers on his lunch period. A letter to that effect was sent by Mr. Merrick, the field examiner to the union, a copy of which letter is hereto annexed and made a part of this statement.*

---

* Benjamin Rubenstein, Esquire
United Automobile, Aircraft & Agricultural Implement Workers of America, UAW (CIO)
55 West 42nd Street
New York 18, N. Y.

Re: Fafnir Bearing Company
Case No. 1-C-2321

Dear Mr. Rubenstein:

After a thorough investigation of the above entitled matter, it appears that the company has no objection to informal discussion amongst a small group of employees during the 18-minute lunch period. The company

The evidence also shows that between the time of the first threat on the part of the company and the receipt of the letter from Mr. Merrick, Greenberg abstained from having such discussions. Only after he and the union were assured that there is no violation on his part and that the company promised not to interfere with such discussions, did he proceed in having another discussion on Jan. 8, 1943.

The evidence further shows that even though his alleged discussion for which he was fired took place on Jan. 8, 1943, no complaint was made to Greenberg until Jan. 12, 1943 when he was told to resign or be fired. It is interesting to note that on the same date, the company received a letter from the National Labor Relations Board to the effect that the charges of the union were dismissed.

The company at the hearing tried to introduce evidence of general unreliability of Greenberg as an employee. However, the most that it could set forth was the fact that on several occasions Greenberg was late for work. Greenberg's reply to that was that his latenesses, whenever they occurred, were due to his union activities, that this was explained to the company and the company made no objections at that time. Besides the alleged latenesses, there were no other charges against Mr. Greenberg in connection with his duties as an employee.

It is hard to understand the logic of the majority of the panel. It is now well known and accepted that leaders of unions are apt to lose time from work, and in all such instances no disciplinary action is taken against them. Proper labor relations necessitates the protection of the jobs of union leaders who are forced to lose time from work due to their union activities. To use this as one of the reasons to sustain the discharge is rather far fetched. It may endanger the existence of the unions and place their leaders in constant fear of losing their jobs because of lateness or absence as a result of union activity. It may disturb the basis of labor relations and is definitely in contradiction to the general policy of the National War Labor Board. Furthermore, the allegation as to Greenberg's latenesses was only an afterthought of the company and was at no time either presented to Greenberg or to the union as one of the reasons for his discharge.

The second reason for Greenberg's discharge—his alleged discussion with the employees—even if improper is not sufficient to warrant as severe a penalty as was imposed on him. Even assuming that the company had a right to prevent its employees from discussing among themselves union matters on their own time (this issue was recently decided to the contrary by the United States Supreme Court in the case of the National Labor Relations Board against Republic Aviation Corporation) yet in this case Greenberg was excused by the fact that he was advised by a representative of the National Labor Relations Board that he was within his rights and that the company agreed to permit him to do so.

At worst, Mr. Greenberg violated a minor rule for which he might have been punished with a day or two layoff.

The undersigned is of the belief, from the evidence submitted, that even the company did not feel justified in discharging the employee and decided to do so only upon receipt of the letter from the National Labor Relations Board informing it of the dismissal of the union's charges.

The undersigned believes that, in the interests of proper labor relations and in the interests of avoiding a possible serious interruption of work at the plant of the company and in the interests of establishing proper labor relations, Greenberg be reinstated so that this matter may be settled. The undersigned further be-

---

has stated that such discussions may involve any matters, including union business. What the company does object to, however, is the organized aspects of the gatherings which Greenberg conducted.

I have discussed the matter thoroughly with the regional attorney, and he concurs with me in the belief that the file does not present a case proper for issuing complaint in view of the company's position in not objecting to discussions during the period among small groups of workers.

I am, therefore, enclosing a withdrawal blank for you to sign and return to this office. Should you fail to execute and return the withdrawal, it is my intention to recommend that the charge in the above case be dismissed.

I am further informing the company that our decision in this matter is based to a large extent upon their noninterference in the future with the rights of the workers during their lunch period to discuss matters of mutual concern to them, as stated above.

Very truly yours,
S. V. Merrick
Field Examiner
NLRB, Region I

lieves that, from any angle of labor relations as well as from the sense of pure justice, Greenberg did not deserve a discharge.

Signed by Daniel J. Gallagher, representing employers.

DAIRYMEN'S ASSN., LTD.—

Decision of Territorial War Labor Board (Honolulu, T. H.)

In re THE DAIRYMEN'S ASSOCIATION, LIMITED [Honolulu, T. H.] *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, DAIRY WORKERS UNION, LOCAL 946 (AFL). Case No. 111-15049-D, July 11, 1945.

PREMIUM WAGE RATES—Unauthorized discontinuance of unauthorized premium

Company is ordered to restore, retroactively to date of its discontinuance, special premium paid drivers working without helpers which was instituted without Board approval. Company having bound itself to pay special rate, even though unauthorized, could not later discontinue it without consulting Board. In view of fact that premium is excessive and unstabilizing, however, parties should negotiate and submit to Board for approval more reasonable allowance to go into effect after company has complied with retroactive requirement of order.

For other rulings see Index-Digest 140.670 and 55.700 in this or other volumes.

Unanimous decision of Territorial War Labor Board (Honolulu, T.H.). Opinion by Sidney Sugerman, chairman. Public member concurring: W. Harold Loper. Labor members concurring: Jack Hall and Carlton Steger. Employer members concurring with opinion: Alfred L. Castle and James R. Tabor.

Directive Order

The Territorial War Labor Board, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

The company shall restore, retroactively to Apr. 15, 1945, the previously established premium rate of pay for ice cream drivers working without helpers in an amount equal to four times their agreed hourly overtime rates for each full day so worked.

Upon the company's compliance in full with the terms of this order, the company shall discontinue the further payment of such premium.

The parties shall negotiate and submit to the Board for approval a lower premium rate or a new basic wage rate for ice cream drivers without helpers. In the event the parties cannot reach agreement thereon, the Board will determine the issue in further proceedings to be had in this case. Any agreement, ruling, or directive order resetting the amount of premium pay or of basic wage rate, as the case may be, for drivers without helpers shall provide for retroactivity thereof to the date of discontinuance hereunder of the established premium.

Nothing herein contained shall be construed to limit the right of the company hereafter to avoid the necessity of paying the drivers the applicable premium by assigning helpers to them.

Any employee who has either quit or been discharged since said date of retroactivity, Apr. 15, 1945, shall receive the amount of the premium pay to be restored up to the date on which his employment with the company terminated. The company and the union shall promptly send a joint letter to each such employee at his last known address advising him of his rights under this provision. The employee must mail his written application for retroactive pay to the company within 60 days after the date of mailing of the joint letter. The company may voluntarily make the payment in any case even though the 60 days have elapsed. The company shall be obligated to make the payment if good cause is shown for the application being delayed beyond the 60 days.

Failure to make the payment where good cause for the delay is alleged may be taken up by the union as a grievance. The 60-day limitation shall not apply to employees who have become members of the armed forces of the United States, either before or within 60 days after the mailing of the joint letter.

If, and to the extent that the company has effected any wage or salary payment or adjustment prior to receiving necessary Board approval therefor, as required by the Stabilization Act of 1942, as amended, and the orders and regulations issued pursuant to such Act, this order of the foregoing retroactive date shall not operate to excuse failure first to have obtained required approval.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall become operative 15 days from the date hereof unless in the meantime a petition for review by the National War Labor Board is filed with the Territorial War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall become operative, and, in the event a petition for review by the National War Labor Board is filed wherein review of portions of this order is requested, either party may request the Territorial War Labor Board to make the remaining portions of the order immediately operative.

Opinion of the Board

July 13, 1945

PREMIUM RATE

Background

SUGARMAN, Chairman:—This case involves the sole remaining issue of a dispute certified after negotiations for a contract in renewal of one expired Jan. 31, 1945, had failed of complete success. This issue developed after the certification when the company, without consultation with the union, with which it was then still negotiating or at least under a continuing duty to bargain, announced a change, commencing April 15, in the pay which certain drivers had been receiving for days when they worked without helpers. An unwarranted strike ensued. At the direction of the Board, the strikers returned to work, looking to the Board for retroactive redress of what the union regarded as a wage cut, the provocation of the strike.

The union shows that the company, through T. Fukinaga, its plant superintendent, had agreed prior to June 6, 1944, the wage stabilization date in the Territory, to pay certain drivers, in addition to their regular compensation, when required to work a day without helpers called for by contract, a premium equal to four times their established overtime rates of pay. This was an amount about equal to that which the helpers would have received for their day's work. The evidence is uncontroverted that in fact on at at least 4* such occasions during the year or so prior to June 6, 1944, the company did pay the drivers at such additional rates and that, on 23 other such occasions in the next 10 months, the company did continue so to pay them. There is no evidence that, if there were any other such occasions, either before or after June 6, 1944, the company withheld this payment to the drivers, at least not until the recent unilateral discontinuance of this premium rate.

The company, admitting that the plant superintendent had agreed to pay the extraordinary rate to the drivers on all the occasions referred to and that it did in fact pay the same, nonetheless argues that he had no authority to fix wages; that the agreement was not reduced to writ-

* On four other occasions in July 1943 and once on June 2, 1944, the company's records show the payment of additional sums to these employees for "overtime," but, since the "no helper" legend did not appear on their time records, as usual when this compensation was paid as such emergency premium, the company would not concede that they were in fact further instances to be added to this figure. Nor yet would the company take the position that these were payments for actual overtime hours worked, a rare practice among these drivers. The plant superintendent admitted in his testimony that he had sometimes forgotten to note on the time records the usual "no helper" symbol after recording credit for "four hours OT" (overtime) as a measure of the emergency premium. However, none of the involved employees in his testimony was able to state positively that these had been payments for days worked without helpers. In this inconclusive state of the evidence, the Board will not draw any inference one way or another as to these alleged occasions.

ing and that no formal determination to pay such wages was made by the company and communicated to the employees; hence, and, because the four instances of the payment before the stabilization date were, without more, insufficient to establish a "practice" binding upon it after June 6, 1944, the company was not alone free not to pay the rate longer but was in doubt whether it had any right under the law to continue paying it thereafter and therefore ceased paying it. Nowhere is it contended that it was the exorbitance of the rate which gave the company pause.

Discussion

The issue before us is a narrow one. It does not encompass a question of the propriety of this particular penalty rate for drivers without helpers; nor of what their appropriate rate, by brackets or by intra-plant relationships, should be; nor even of whether, to aid in the effective prosecution of the war, the rate should be reduced. (The parties are still negotiating the entire wage structure to be embodied in their renewal contract.) The issue as argued to the Board was precisely posed by the May 23-June 5, 1945, exchange of letters between the union and the company. Neither the briefs nor the evidence enlarged that issue beyond the sole and essential question whether the company had reduced the rate with or without warrant. The Board unanimously holds that the action of the company was plainly, by the uncontroverted evidence and by its own admissions and records, without warrant as a matter either of conformity with wage stabilization procedures or of fair dealing in labor relations or of contractual right.

The union has argued, not without some force, that the plant superintendent had actual authority to establish an unscheduled emergency rate of pay not covered by the parties' contract. It maintains that that authority was regularly exercised by him in disposing of the matter at the first step in the grievance procedure. Supporting the union's position is the testimonial admission of the management that it "backs up" the plant superintendent's pay commitments for work performed before it has occasion to review his actions though it reserves the right not to treat them as binding in respect of work to be performed thereafter. The latter reservation would be irrelevant to the question whether, at the time he made the promise, he was in fact clothed with authority. This is especially so in the absence of any evidence that the company's mental reservations had ever been communicated to the union or to the employees as a limitation upon his apparent authority to bind the company for all time, as it were.

Yet the Board does not rest its decision upon any finding that, without what transpired after wage stabilization went into effect, the company had made a firm, irrevocable commitment through the actions of its plant superintendent. It is not necessary, in our view, to resolve the question of his original authority and the prospective effect of his actions from the time they were taken. Rather, we appraise the company's liability for his actions in hindsight in light of the company's course of conduct thereafter.

If, as the company argues, the plant superintendent was without prior authority to fix wages when he made the conceded agreement, that lack of original authority was nevertheless cured by the company in paying the men, as promised, on a total of at least 27 such occasions as were provided for, on 18 different days when they arose. By that the company completely ratified his exercise of apparent authority as effectively as though it had authorized him in advance to make the arrangement on its behalf. That the larger number of instances of payment took place after June 6, 1944, is of no consequence. To negate the effect of the ratification by disregarding those 23 later instances would necessitate our indulging the presumption, which the company does not expressly ask us to raise against it, that it violated the law in each such instance. Rather, Anglo-Saxon traditions of law adhered to by administrative agencies in adversary proceedings bespeak a fair presumption running to the contrary.

Coupled with the mere happening of all these many isolated instances, giving them significant continuity as a complete ratification, are two incidents testified to by management, one before wage stabilization, one after. Thus, when the company learned that its plant superintendent, on the four occasions in 1943 and early 1944 when helpers did not report for work, had agreed to pay the drivers the additional money for taking out the trucks and performing both jobs alone, it did not protest the rate agreed to or make any effort to repudiate his authority

to fix compensation as such. It merely regarded the superintendent's "solution" of the manpower shortage as contrary to company policy not in respect of the amount to be paid for the work under the conditions described but, on its own say-so, only in that the drivers should never be sent out at all in any circumstances without helpers —if necessary to be drawn from among the factory workers. That the company now elects a solution of the helper shortage along the lines first adopted by the superintendent, but without additional pay to the drivers, would suggest what we do not choose to believe, that it had consciously before been fostering the practice of "featherbedding."

The other significant incident was the company's announcement in early April 1945, after most of the 27 instances had already occurred, that on and after Apr. 15, 1945, drivers would go out without helpers but that until then they would continue to receive their former premium rate for so doing. It hardly lies with the company now to claim that the rate might be discontinued after April 15 because it was not an established and recognized rate of compensation. By these two incidents at either end of the series of 27 instances, the company effectively estopped itself now to disclaim its obligation.

To the minds of the Board, the company, having bound itself to a rate of pay for this work perhaps uneconomic when set but never as such reasonably reset, took it upon itself too late to undo its folly. That it could not do without Board approval. The company would have been sensibly advised to ascertain in advance whether or not the law so constrained it in April 1945, when it says it entertained doubts as to its rights, by filing a Form 1 joint request with the union for a ruling by the Board upon all the facts here given. Instead, it assumed to resolve those doubts in its own favor and blundered. In the setting of a labor dispute already certified to the Board, the fracture of relations was clumsily compounded.

Conclusion

So holding, the Board orders the company to restore retroactively to Apr. 15, 1945, the rate of additional pay of the drivers here involved, when they operate without helpers, to that which prevailed by company practice prior to that date.

However, as the Board is satisfied from all the evidence, including the union's admission, that the premium rate so to be restored is excessively out of line with all rates for comparable work in the industry and area and with the company's intra-plant rate structure, the Board has exercised its authority under the law to order the discontinuance of that rate immediately upon the company's compliance with the retroactive provisions of the directive order.

If the parties are unable to agree upon a proper, approvable rate for ice cream drivers without helpers, the Board will reset the rate in further proceedings to be had in this case, making the reset rate retroactive to such time as the company, fully complying with the directive order in all other respects, shall have discontinued further payment of the restored rate.

Concurring Opinion of Employer Members

July 13, 1945

PREMIUM RATE

CASTLE and TABOR, Employer Members:—We concur in the results reached in the directive filed herein but not necessarily in the reasoning of the opinion. We feel that the four extra payments made to the drivers working without a helper in 1943 and 1944 were made under circumstances of emergency. Such isolated instances, without more, did not constitute a practice.

In March 1945, a different situation prescribed itself. There the proper company official, faced with the fact there shortly would be no more helpers and that a new union contract was in the process of negotiation, promised drivers who worked without a helper that they would receive not only their own drivers' pay but helpers' pay up to April 15. Whether this is technically called a ratification of the method followed in the four previous occurrences or an adoption of that pay policy, it in fact created an impossible wage setup both from the company point of view and that of wage stabilization. City ice cream drivers work by the job, so to speak, finishing their work in some six hours. When without a helper, it increased their working time by a half hour or at the outside, an hour. To pay them, under these circumstances, not only their own regular pay but also the entire helpers' pay was highly infla-

tionary. The directive order not only recognizes this fact but properly orders its correction.

MOTION PICTURE PRODUCERS ASSN., INC.—

Decision of Regional Board X (San Francisco)

In re MOTION PICTURE PRODUCERS ASSOCIATION, INCORPORATED* [Los Angeles, Calif.] *and* INTERNATIONAL PHOTOGRAPHERS OF THE MOTION PICTURE INDUSTRIES, LOCAL 659 (AFL). Case No. 111-10722-D [10-D-668], July 24, 1945.

CONTRACTS—Validity of contract—Contract not ratified by union members

Contract which was not ratified by local union's membership as required by resolution adopted at union meeting is not valid and binding, despite contention of company that it was clearly understood that all participants in negotiations were authorized to conclude binding agreement on behalf of their respective parties. Injustice that may be done to employers by reopening negotiations is outweighed by resultant damages to stable relationship from compelling union members to accept agreement they rejected.

For other rulings see Index-Digest 37.822 in this or other volumes.

Majority decision of Regional Board X (San Francisco) reversing recommendations of panel. Opinion by James C. Hill, public member. Public members concurring: Thomas Fair Neblett and Ansley K. Salz. Public member dissenting: M. C. Sloss. Labor members concurring: Beaumont Silverton, Wendell Phillips, Herbert Wilson, and Ed Hall. Employer members dissenting with opinion: R. A. Smardon, Kenneth White, George O. Bahrs, and C. G. Brenneman.

---

* Twentieth Century Fox Film Corp., Universal Pictures Co., Inc., Paramount Pictures, Inc., Columbia Pictures Corp., Warner Bros. Pictures, Inc., Republic Pictures, Inc., and Loew's, Inc.

Directive Order

I. The Regional War Labor Board for the Tenth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby finds that there is no valid contract in existence between the parties and orders that the matter of a new contract be referred back to the parties for negotiation. Within thirty (30) days from the receipt of this directive order, the parties shall report to the War Labor Board the result of their negotiations, and any unresolved issues will be finally determined by the Board.

II. The provisions of this order shall become operative as the order of the National War Labor Board fourteen (14) days after the date of issuance, unless within such fourteen (14) days either party files a petition for National Board review of the order with the Tenth Regional War Labor Board in the manner prescribed in the "Summary of Procedures."

Either party may petition the Regional Board to make effective immediately according to its terms those provisions of the directive order on which review has not been sought, or the parties may mutually agree upon the date when the order, or any part thereof shall take effect, except that where a wage or salary adjustment is made subject to the approval of the Director of Economic Stabilization, the parties may not by their agreement make such adjustment effective prior to the date of such approval. Notwithstanding any other provision of this paragraph, that part of a directive order which continues in effect the terms and conditions of a prior contract which has expired or been otherwise terminated, shall not be suspended or stayed by the filing of a petition for review, but shall become effective according to its terms, unless and until the National Board upon consideration of a petition for review otherwise directs.

Either party may, within seven (7) days of the date of issuance of the directive order, file with the Regional Board, in accordance with the "Summary of Procedures," a petition for Regional reconsideration. The filing of

such a petition shall not, unless the Regional Board otherwise directs, stay or suspend the operation of the order, nor shall it extend the time within which a party may petition for review.

Opinion of the Board

July 18, 1945

THE PARTIES

HILL, Chairman:—This case involves eight motion picture producing companies and Local No. 659 of the International Photographers of the Motion Picture Industries, a chartered local of the International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, (AFL). These parties will be referred to hereafter as "the producers," "the local" and "the international alliance," respectively.

The companies concerned are: Columbia Pictures Corporation; Loews, Inc.; Paramount Pictures, Inc.; RKO Radio Pictures, Inc.; Republic Productions, Inc.; Twentieth Century-Fox Film Corporation; Universal Pictures Company, Inc.; and Warner Brothers, Pictures, Inc. The case involves approximately 450 cameramen employed in the Los Angeles County operations of these companies.

ISSUE

The primary question presented for determination by the Board is: Whether or not an agreement reached in April 1944 as a result of negotiations between representatives of the groups herein involved, but subsequently rejected by the membership of Local 659, constitutes a valid contract which is binding on the local.

If it is determined that no binding agreement exists, then the substantive issues relating to the provisions of the contract for the period in question are unresolved and must be determined anew.

With respect to the primary issue, the Tenth Regional War Labor Board by a vote of seven to five, with industry and one public member dissenting, has determined that the agreement of Apr. 17, 1944, should not be considered as a valid and binding contract, and has directed the parties to negotiate for a period of 30 days with respect to the substantive issues in dispute. The principal considerations which lead the majority of the Board to this conclusion are set forth in this opinion.

HISTORY OF THE DISPUTE

The report and recommendations of the panel appointed by the Tenth Regional Board to hear and consider this case provides an excellent account of the historical background of collective bargaining relationships between these parties and a detailed discussion of the events leading up to and through the negotiations in New York City during March and April of 1944. It will not be necessary to repeat this story in this opinion, save in relation to certain statements and events which have direct and prominent relationship to the issue under discussion.

The International Alliance has represented numerous crafts of the motion picture industry for approximately 20 years, and was certified by the National Labor Relations Board as the bargaining agent for these crafts in September 1939. Local 659 of the International Photographers was chartered by the International Alliance to represent the Hollywood cameramen about 1928. In 1933 certain of the photographers known as First Cameraman withdrew from the Local and formed an organization called the American Society of Cinematographers. This organization dealt separately with the producers from 1934 until 1943 when its agreement with the producers was rescinded. During this period the International Alliance continued its claim to represent all cameramen, but due to the dispute with the American Society of Cinematrographers, First Cameramen were excluded from the bargaining unit at the time the International Alliance was certified by NLRB.

The agreement immediately preceding the contract now in dispute was negotiated in 1941 and early 1942 and expired according to its terms on Jan. 1, 1944. Delays in the actual signing by Local 659 were occasioned by the dispute over the representation of First Cameramen, but as finally consummated the agreement provided recognition of Local 659 as the exclusive representative of all First Cameramen and of the International Alliance "represented by Local 659" as the bargaining agent for all other photographic classifications.

Efforts were made by the union in the fall and winter of 1943 to institute negotiations for a new contract to be effective Jan. 1, 1944, but actual negotiations did not take place until

March of 1944, when representatives of the producers, the International Alliance and several of its affiliated locals, including Local 659, met in New York City. The agreement, the status of which is now in question, was initialed in draft on Apr. 13, 1944. It was subsequently signed by the representative of the producers and the President of the International Alliance but was rejected by a vote of the membership at the next meeting of Local 659. The producers and the international President were notified to this effect on May 8, 1944, and further meetings were requested. Failing to secure a continuation of the negotiations, the union invoked the aid of the U. S. Conciliation Service on June 23, 1944, and on Sept. 8, 1944, the case was certified to the National War Labor Board.

POSITION OF THE PARTIES

Most of the present controversy relates to statements and events during the period from September 1943 to April 1944. The producers claim, and the union denied, that the union representatives were authorized to conclude a binding agreement and that such agreement having been reached it cannot then be repudiated by the local on the grounds that its representatives' authority was limited and their commitments conditional on ratification by the local union membership. The argument of the producers is three-fold:

(a) That the negotiating committee for the local union was authorized by the local to conclude a binding agreement;

(b) That even if not actually authorized, the local union representatives possessed "ostensible authority" to take final action which would be binding on the local; and

(c) That in any event the action of the President of the International Alliance is binding on the local since, under the terms of certification by the National Labor Relations Board, the International Alliance is designated as the exclusive bargaining agent for the employees involved.

The union stands in vigorous opposition to each of these contentions.

Rather than recite the arguments of the parties in detail, the writer will attempt to give a brief resume of the statements and events which have received greatest emphasis in the briefs and testimony of the parties. On the one hand, it appears that union officials indicated directly or indirectly at various times that the negotiating committee for the local union was authorized to conclude a binding agreement. Thus:

(a) In a letter dated Sept. 8, 1943, in response to an inquiry from Mr. Richard Walsh, President of the International Alliance, Mr. Herbert Aller, business representative for Local 659, advised Mr. Walsh that "the committee that will negotiate will have full power to act in these negotiations."

(b) Again on Dec. 28, 1943, Mr. Aller addressed a telegram to the Producers' representative, Mr. Pat Casey, in which the authority of the union representatives is confirmed apparently without reservation. This telegram included the following paragraph:

"Our representatives will be authorized to negotiate a contract with you which will be final and binding with our members and we request that the producers' representatives at these negotiations be likewise authorized to negotiate contracts that will be final and binding on their organizations. We are prepared to commence negotiations and will submit our proposed contracts when same commence. Following the procedure of past negotiations, we will expect counter-proposals, if any, to be submitted within 24 hours after the commencement of negotiations."

(c) Further, the producers claim that the union representatives reaffirmed their unconditional authority during the negotiations in New York, and Mr. Aller exercised his authority by initialing the final agreement reached on Apr. 13, 1944.

The producers maintain that it was clearly understood that all participants in the negotiations would be authorized to act finally on behalf of the respective parties, that Local 659 did so authorize its representatives as shown by the telegram of Dec. 28, stating the position of the local union's Executive Board and that the producers' representatives took special care to ascertain the authority of all the union representatives during the meeting in New York.

On the other hand, it appears that the membership of Local 659 continuously reserved the rights to pass upon the terms of any agreement reached as a result of these negotiations. Thus:

(a) On Sept. 20, 1943, as shown by the minutes of a membership meeting of the local, a resolution was passed authorizing a negotiating committee to meet with the producers and "to carry on negotiations for a new contract for the local, all of which is to be submitted to ratification by the membership of the local union." (According to the union the "power to act" cited in the letter of Sept. 8, 1943, meant power to negotiate, but always subject to ratification of any agreements reached.)

(b) The membership of the local actually asserted this authority prior to the initialing by Aller of the agreement on Apr. 13, 1944. The first proposals of the producers during the New York negotiations were referred back to the local and rejected by the members. This action was reported to the negotiating committee by telegram of Apr. 5, 1944, which read: "* * * report of negotiating committee to membership unanimously rejected by membership. Final deal must be submitted to membership before signing."

These appear to be the highlights in the record of the case prior to the conclusion of negotiations in April of 1944. A draft agreement was drawn up and initialed by Mr. Casey for the producers and Mr. Aller for the local.

At that time all the other local union representatives had returned from New York. The final document was signed by President Walsh of the International Alliance on Apr. 17, but when referred to Local 659 it was unanimously rejected by a vote of the membership.

PANEL'S FINDINGS

The panel which heard and considered this case has sought to evaluate the record in the framework of the major contentions of the producers. A majority of the panel, the labor member dissenting, have concluded that the agreement is legal and binding and have recommended that the Board should direct the parties to execute its terms.

The panel bases its conclusion on the grounds of ostensible authority. In its majority report the panel rejects the producers' contention that the union representatives possessed real authority to bind the local. However, the panel finds that the local union negotiating committee did possess ostensible authority to conclude a binding agreement, and the producers, acting without want of ordinary care, proceeded in good faith on the basis of this understanding. Under these circumstances, the local union having conveyed to the producers the understanding that the authority of its agents was unconditional, the panel held that the agreement constitutes a valid contract which is binding on both of the parties. Having so determined, the panel did not find it necessary to explore and evaluate the third contention of the producers, that the International Alliance possesses the ultimate authority to act on behalf of the local.

DECISION

A majority of the Board have reached a contrary decision. The Board rejects the major contentions of the producers with regard to the actual authority of the local union's representatives and the final authority of the International Alliance. In the opinion of the majority, the case for ostensible authority is strong but not conclusive. Considering the entire record of the case from the standpoint both of its legal aspects and the broader equities involved, a majority of the Board conclude that the agreement in question should not be considered a valid and binding contract.

Real Authority of Representatives

With regard to the question of real authority the Board is in agreement with the panel's finding that the union representatives were not actually authorized to bind the local. Such authority, as the panel has stated, must derive from express delegation by the local membership or the Executive Council of the Local, acting in accordance with the union constitution. Further, in the face of any apparent conflict in the actions of these bodies, it is our view that primacy should attach to the actions and position taken by the union membership. Of overriding significance in this respect is the recorded action of the membership in the meeting of Sept. 20, 1943, when it was resolved that any agreement reached by the union representatives in negotiations with the producers must be subject to ratification by the membership. There is no indication that the membership ever retracted from this position. On the contrary, it reasserted this position one week prior to the conclusion of the New York negotiations by re-

jecting the provisions first proposed and again instructed the negotiating committee that the "final deal must be submitted to membership before signing." It is true that certain communications from a local union official express a contrary position, which cannot well be explained away by the construction later placed by the union on the meaning of language which on its face seems abundantly clear. These matters have bearing on the question of ostensible authority, but do not in the opinion of the panel and the Board establish the actual authority of the representatives of the union.

The action of the membership of Local 659 does not appear inconsistent with its previous practice or with the practice of trade unions generally. The right to ratify agreements reached in collective bargaining negotiations is frequently reserved by the membership of union organizations, and, according to the union in this case, this right was exercised with respect to proposals made and agreements reached in negotiations between these parties during 1941 and 1942. The insistence upon this right on the part of this local is particularly understandable in view of the history of organizational relationships within the International Alliance. It was this organization which attracted national attention as a result of the notorious Browne-Bioff affair, the overtones of which are still evident in the outlook of this local. Against this background of corrupt and dictatorial leadership of the International Alliance the preservation of a strong measure of local autonomy has been a matter of jealous concern to the local membership.

Ostensible Authority

A majority of the panel concluded that the agreement of Apr. 17, 1944, was final and binding for the reason that the bargaining representatives of Local 659, although not actually authorized to bind the local, did possess ostensible authority to conclude a binding agreement. In more legal phraseology the proposition is that the principal is bound by the act of his agent, even though the latter has exceeded the authority granted him by the principal, if it is found that the principal has given the other party to understand that his agents' authority was not so limited.*

The Board recognizes the force of this doctrine. The principle of ostensible agency is recognized in the law of contracts and has been recognized in several decisions of agencies of the National War Labor Board.† A similar logic was stated by the Tenth Regional Board in connection with its decision in the Hotel del Coronado case, a decision, incidentally, which has been emphasized by the producers as a precedent in support of their position in the instant case and which will be mentioned later in this opinion.‡ In the majority opinion written by Arthur Miller in the Hotel del Coronado case it is stated:

"The question then arises as to whether, when an unconditional offer and acceptance of a provision in a proposed union contract has been made during conciliation hearings, either of these parties may thereafter repudiate such an agreement without the consent of the other. It is certainly the law that, with any other class of contract, an unconditional offer and acceptance binds the parties. It is also the law that, when one places his agent in the apparent position of having the authority to bind him by a contract, he may not later repudiate the contract made by his agent on the ground that the actual authority of the agent did not extend so far."

Returning to the record in the present case, it appears to the writer that a strong case is made for the contentions of the producers during the earlier phases of the period under discussion. In this context the question is not what actually took place at all stages of the proceedings, but what information was conveyed by the union to the employers and what they might reasonably be presumed to have understood to be the union's position.

There is no reason to believe, for example, that the producers could have known of the action taken by the local in September 1943 when the membership resolved that any agreements reached by its negotiating committee must be referred back to the membership for ratification. On the

* The California Civil Code defines ostensible authority as follows (Sec. 2317): "Ostensible authority is such as a principal intentionally or by want of ordinary care causes or allows a third person to believe the agent to possess." Sec. 2334 provides: "A principal is bound by the acts of his agents, under a merely ostensible authority, to those persons who in good faith and without want of ordinary care, incurred a liability or parted with value upon the faith thereof."

† E. G. Pretlow Peanut Company, 13 War Lab. Rep. 267.

‡ Case No. 111-5482-D, 17 War Lab. Rep. 74.

other hand the telegram of Dec. 28, 1943, which was addressed to the labor representative of the producers, leaves little room for doubt as to the authority of the local union representatives. The telegram states that "Our representatives will be authorized to negotiate a contract with you which will be final and binding with our members." It goes on to invite counter-proposals by the producers, a clear indication that, contrary to the position now taken by the union, the authority of the negotiating committee was not limited to the submission of proposals already approved by the local membership. The telegram was signed by Mr. Herbert Aller, acting, according to the panels' finding, on behalf of the Executive Board of Local 659. Since the Executive Board is empowered by the constitution to act for the local in matters of this kind, the panel considered this telegram an official statement of the principal.*

The producers remind us that this telegram was dispatched three months after the resolution of the membership restricting the authority of the negotiating committee. The union counters that the telegram was sent three months prior to the beginning of negotiations in New York and referred to negotiations then being sought by the union in Hollywood. According to the union, the telegram was never answered by the producers and should not be considered relevant to the present issue. Similarly with respect to other matters in these proceedings the factor of timing has been advanced by both parties to emphasize or discount the significance of particular happenings. In the opinion of the writer this factor must be taken into account, and it is partly for this reason that major importance must attach to what took place during the actual negotiations in New York City.

To be weighed against the telegram of Dec. 28 is the fact that the local union membership, which may be considered the "ultimate principal" of which the local's Executive Board is itself an agent, rejected the first proposals made during the negotiations and the fact that this rejection was clearly made known to the producers. At that time Mr. Aller, who headed the local negotiating committee, was again informed that the "final deal must be submitted to the membership before signing." (Telegram of Apr. 5, 1944.)† The conclusion is inescapable that the producers were by this action put on notice that the membership of Local 659 did not consider the negotiating committee as being vested with powers of final action. In view of this fact the weight to be assigned the telegram of the previous December appears to be greatly reduced.

The producers have maintained that, rather than to accept the previous statements of the union at face value they were careful to scure renewed assurances of the unconditional authority of the union representatives at the New York negotiations and that such assurances were freely given.

The panel does not support this contention in full, but finds that, while the testimony was conflicting, the preponderance of evidence indicated that the representatives of the local failed to disavow their authority when given an opportunity to do so. This finding is made both as to the entire negotiating committee during the first period of negotiations and as to Mr. Aller, who was the only representative of the local present during the second conference following the rejection by the local of the producers' first proposals. The panel concludes that ostensible authority, which had been established by the telegram of Dec. 28, was continued in force by the failure of the union's officers and representatives to make their position clear.

At this point it is important to recall certain of the conditions requisite to a strict application of the principle of ostensible authority. One of the most important of these conditional requirements is that ostensible authority must be established and conveyed by the principal rather than by

*Art. XII, Sec. 2, of the constitution of Local 659, provides in part as follows:

"The Executive Board shall have supervision over all business of this local, and all decisions, rulings, resolutions, and laws rendered, adopted or passed, and actions taken by the Board not inconsistent with the International Constitution and By-Laws and this Constitution and By-Laws, shall be obeyed as the laws of this local, and shall so stand unless ordered changed by a two-thirds vote of the members present at the next regular general membership meeting or at a special meeting called therefor during the succeeding month.

"The Executive Board shall interpret the laws and regulations of this local, establish rules, and decide the course of action to be taken in any situation consistent with the Constitution and By-Laws as may be necessary to carry on the business and promote the interests of the local."

†It is not established in the record that the producers' representatives saw the actual telegram which is quoted, but it is admitted that several of these representatives were informed of the rejection by the local.

his agent. The principal could not in equity be held accountable for actions based on excessive claims of authority on the part of his agent unless he had himself proclaimed this authority or failed to exercise ordinary care to correct or prevent the erroneous impressions created by his agent. In the context of the present dispute it would be possible to debate at length the question of the identification of the principal since the actions of the Executive Board and the membership of the local appear to be at variance. (The arguments of the producers with respect to their third contention regarding the final authority of the international would also suggest that the International President should be considered the principal.) In general it would seem thoroughly reasonable for an employer to accept as authoritative the statements emanating from the Executive Board of a union, and the Executive Board may, as the panel reasons, be accepted as the principal. However, the authority of the Executive Board is itself derived from the membership of the local. This fact appears to be implicitly recognized in the reasoning of the panel; else the action of the Executive Board in connection with the much discussed telegram of December 1943 would, as an act of the principal, vest the negotiating committee with actual as well as ostensible authority, a conclusion which the panel rejects.

More important than these distinctions, however, is the apparent fact that during the negotiations of March and April 1944 the assurances of authority which the producers sought to elicit, and which the panel found to have been proven only in the negative sense of failure to disavow authority, were obtained by the producers from the agent rather than from the principal. It is particularly significant that this should hold true after the local union's membership had rejected the first set of proposals emanating from these negotiations. The record shows, moreover, that with the exception of Mr. Aller all of the representatives of Local 659 had left the scene of negotiations at the time the second proposals were worked out. Quite apart, then, from the question of the positive or negative nature of the assurances given by Mr. Aller, the fact remains that the representatives of the employer being aware of the local's rejection of the first proposals and being professedly concerned to secure affirmance of final authority before proceeding further with the negotiations, proceeded then on the basis of assurances from Mr. Aller, who cannot by any count be considered as other than an agent of the local union. In the light of these circumstances, and within the confines of this limited aspect of the problem, it appears to the majority of the Board that the case for considering the agreement in question as a binding contract on the grounds of ostensible authority is inconclusive.

The Hotel del Coronado Decision

Reference has been made to this Board's decision in the Hotel del Coronado case, which in the minds of the producers and a minority of the Board who dissent from the present decision, constitutes a clear precedent for a contrary decision in the instant case.

The writer wishes to answer this point and to defend the position of the majority against a possible charge that the Board has followed a "double standard" with respect to employers and unions.

The Hotel del Coronado case involved as one of the disputed issues the question of whether an agreement reached during negotiations for a first contract between the parties on the issue of union security should be considered final and binding. The evidence showed that an offer made by the employer's representative providing a modified form of union shop had been accepted by the union, and was subsequently repudiated by the directors of the parent corporation on the grounds that the employer's agent had no authority to bind the company. The Board's action in that case was based on specific findings of fact by a hearing officer, as well as through testimony before the Board. The hearing officer found that the employer's offer had been made unconditionally and that no indication to the contrary had been given either by the principal or his agent. Further, the hearing officer found that the agreement was reached in full cognizance of the company, which did not register its objection until some two months later.

These factual findings were supported by the U. S. Conciliator who sat through most of the negotiations extending from Oct. 22 to Nov. 27, 1943. The agreement was recorded by the conciliator and the issue was therefore not included in the certification

of issues to the War Labor Board on Dec. 15, 1943. The employer's objections were first raised in January of 1944.

The situation presented in the Hotel del Coronado case thus differs in several notable respects from that presented herein. In the first place, there were none of the factors there present, such as experience of prior negotiations or actual rejection of proposals during the course of negotiations which establish a presumption of some knowledge that ratification might be required. Secondly, the principal had knowledge of the commitments of his agent and failed to object within a reasonable period. In the Hotel del Coronado case it was demonstrated at least to the satisfaction of a majority of the board (Industry members dissented, although largely because of other considerations not directly related to this particular question),* that the principal had vested ostensible authority in his agent whereas this proposition is not conclusively demonstrated to a majority of the Board in the present case. Finally, a point bearing perhaps more on the broader equities than the narrower legal aspects of the Hotel del Coronado case involved the repudiation by one of the parties of offers made by that party and accepted by the other as distinguished from the present situation in which the party which proclaims the binding character of the agreement is the one whose proposals and counter-proposals have been rejected by the other side.

Rights of Local Union

Since a majority of the Board do not concur with the panel's conclusion on the point of ostensible authority, it becomes necessary to examine into the third major contention of the producers, namely, that Local 659 is bound by the action of the President of the International Alliance, which is the legally certified bargaining agent for the employees involved. (The panel having rested its conclusion on the ostensible authority of the local union negotiating committee, did not find it necessary to go into this question). The Board rejects the contention of the producers as being invalid in view of the circumstances in this case and as an improper interpretation of the National Labor Relations Act.

In the first place there is implicit, if not explicit, in the argument of the producers an apparent misconception of the meaning and significance of NLRB certification. In certifying the International Alliance of Theatrical Stage employees * (or any other union organization) the National Labor Relations Board has simply designated, in accordance with legally established procedures and through a majority vote of the employees in the bargaining unit, the organization which shall be recognized as the exclusive representative of the employees concerned for the purposes of collective bargaining with the employer. The National Labor Relations Board does not, nor is it so empowered under the Act, intend or presume to determine the authority of the officials of the organization which is certified nor the rights of divisional organizations within it. The extent of authority which may be granted to any official or representative of the members who comprise the organization and the manner in which it is granted are solely the concern of the membership and may be formalized in the union's constitution or defined for specific occasions and purposes by vote of the membership. The exclusive representative may, in accordance with the procedures and authority established by the membership, bargain with the employees or their representative. There is nothing in the certification of an international union as the bargaining agent to prevent the designation by the international of any official or representative of the international or one of its locals, or an affiliated local as such, to represent a group of the members in collective bargaining negotiations. Further, the term "bargain," as officially interpreted under the Act, does not necessitate the conclusion of agreements, much less the requirement that agreements or proposals made shall of necessity be binding on the membership. It does not appear in any way contrary to the Labor Relations Act or the certification by the National Labor Relations Board of the International Alliance

* Cf. Dissenting opinion of employer members, 17 War Lab. Rep. 76.

* The actual certification defines the bargaining agent as the International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada and the Studio Utility Employees, Local 724, as exclusive representatives of the classifications specified. The bargaining unit at the time of certification did not include First Cameramen, who were then represented by the American Society of Cinematographers.

for the members of Local 659 to limit the authority of their representatives by the requirement that agreements reached during negotiations with the employer shall be subject to ratification by the membership.

Secondly, the record in this case fails to establish the authority, either real or ostensible, of the international president to bind the local. The arguments and citations of the producers are addressed primarily to the point of the authority of the negotiating committee for the local union, and it is on this basis that the panel rests its conclusion. If it were established that the international president was vested with exclusive bargaining rights in the manner suggested, it would seem that the main burden of the producers' argument, as well as the panel's finding, would fall to the ground.

It appears from the record that President Walsh was operating from the outset on the theory that final action rested with the local. There may be conflicting evidence as to his understanding and the impressions which he conveyed to the producers with respect to the extent of authority of the local union's negotiating committee, but there is little or no suggestion that he considered his own signature on the agreement as in itself binding on the local. If so, his action would appear to be in violation of the constitution of the international, which provides as follows:

"Art. 22, Sec. 2:

"The international president or his representative shall endeavor to adjust any controversy with an employer referred to the international president by an affiliated local union, but the international president or his representatives shall not have the power to consummate an adjustment of a controversy unless such adjustment meets with the approval of the affected local union."

In this and other provisions of the international constitution the authority of the locals, subject to conformity with general rules of the constitution of the international, to determine through initial bargaining or final ratification the provisions of agreements covering the local is confirmed.

Finally, it should be pointed out that Local 659 has in practice and under contract been recognized by the producers. It appears that negotiations took place on several occasions between representatives of the producers and the local, both in New York and on the West Coast, during 1941 and 1942, in which no international representative was present. The contract expiring Jan. 1, 1944, recognized Local 659 as exclusive representative of all First Cameramen and "the IATSE represented by Local 659" as representative of all other classifications engaged in photographic work.

Equities of Case

The foregoing discussion has been addressed almost exclusively to those aspects of the disputed issue which are essentially legal. These features of the case have been treated at some length, and probably with disproportionate weight, for the reason the issue was largely so conceived and presented by the party whose claims have been rejected. It must be emphasized, however, that the Board does not conceive its functions, nor its obligations under the statutes and Executive Orders which define its powers, as being those of a court of law. The primary purpose of the War Labor Board, aside from the administration of wage and salary stabilization, is the equitable settlement of industrial disputes and the promotion of harmonious relations between employers and employees as a means of furthering maximum and continuous production. It has been repeatedly asserted in opinions of the National Board that the Board will not base its decisions on narrow legalistic considerations but on the basis of equity and the broad purposes stated above.

The writer does not mean to suggest that legal considerations are not important, or that the panel was moved by overly narrow legal technicalities. Neither is it intended to make the decision of the Board rest solely on the intricate and fine distinctions which may be drawn under the doctrine of ostensible authority. The problem for the Board is, rather, to reach the most equitable solution to the problem which is consistent with the legal rights and obligations of the parties. If it is held that the balance of equity is on the side of one party to a dispute, the writer is of the opinion that only by the most compelling showing that accepted legal principles would otherwise be prejudiced would a contrary decision be justified. In the present case a majority of the Board are not convinced that such a showing has been made.

There can be little doubt, in the writer's opinion, that officials of the union, both local and international, did at various times allow the producers to understand that the union's representatives were authorized to conclude a binding agreement. In so far as this is true these officials exhibited negligence, if not bad faith, which it is not the purpose of the Board to condone. On the other hand, the local membership acting with apparent good cause insisted from the outset on their right to pass upon the terms of any agreement by which they were to be bound. The injustice which may be done to the producers by reopening these negotiations, however, is greatly outweighed, in the opinion of the majority by the injustice to the union members, and the resultant damage to stable relationships, which would result from forcing the acceptance of a proposed agreement which they have overwhelmingly rejected and which they consider to be in violation of the local union's rights under the Constitution of the International.

Dissenting Opinion of Employer Members

Aug. 6, 1945

WHITE, BAHRS, SMARDON, and BRENNEMAN, Employer Members:—The Industry members and one of the four public members, Judge M. C. Sloss, have dissented from the decision of a majority of the Regional Board reversing the recommendations of the panel. In this dissenting opinion the industry members desire to point out wherein the decision of the majority compels the employers to violate the National Labor Relations Act, disregards, fundamental principles of the law of contracts and the law of agency, applies to employees a different standard than has heretofore been set up for employers under the same circumstances, and achieves a result which will have the effect of discouraging rather than encouraging the processes of collective bargaining.

There is no substantial conflict as to the facts. The principle vice of the decision of the majority lies in the erroneous application of well-established principles of law and of prior decisions. The fundamental problems are problems of law. In this connection it is interesting to note that Judge M. C. Sloss, a former member of the highest appellate court of California and an outstanding member of the California bar, joined the industry members in dissenting from the decision of the majority.

RIGHT OF LOCAL UNION

A proper consideration of this case requires that a careful distinction be made between the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (hereinafter referred to as the "International Alliance") and International Photographers of the Motion Picture Industries, Local 659 (hereinafter referred to as "Local 659"), a local union chartered by the International Alliance. The dispute in this case is not between the employers and the International Alliance but is a dispute between the employers and Local 659. The parties to this proceeding are the employers and Local 659. The International Alliance is not a party to this proceeding.

The order of a majority of the Regional Board refers the dispute over wages, hours, and working conditions for cameramen "to the parties for negotiation," and requires the parties to "report to the War Labor Board the result of their negotiations," with a further provision that any issues which remain unresolved "will be finally determined by the Board." Since Local 659 and the employers are the "parties," the order requires that the employers enter into negotiations with Local 659. The order thus requires the employers to disregard and violate the order of the National Labor Relations Board in which it certified that the International Alliance (not Local 659) is the duly certified collective bargaining agent of cameramen.

The contract between the employers and the International Alliance which was executed on Apr. 17, 1944, covers the following classifications of employees: First Cameramen and/or Directors of Photography; Second Cameramen; Still Cameramen; Senior Assistant Cameramen; Junior Assistant Cameramen; and Film Loaders.

On Sept. 26, 1939, the National Labor Relations Board certified that the International Alliance and Studio Utility Employees, Local 724, were the exclusive collective bargaining representatives of all such classifications of empoyees except first cameramen employed by all of the producers herein involved except Republic Productions, Inc. The evidence disclosed that since the date of that certification Republic

has recognized the International Alliance as the exclusive collective bargaining agent of all of such classifications; that by arrangement between the International Alliance and Studio Utility Employees, Local 724, the International Alliance has represented employees in the crafts of the International Alliance; and that during the negotiations leading up to the contract of Apr. 17, 1944, the producers recognized the International Alliance as the exclusive collective bargaining agent of first cameramen as well as of the other classifications of cameramen. No other or different certification has been made by the National Labor Relations Board since that date. If the employers are now required to enter into negotiations with Local 659, such requirement will compel the employers to violate and disregard the National Labor Relations Board certification of Sept. 26, 1939.

In requiring the employers to enter into negotiations with an organization other than the duly certified collective bargaining agent, the order made by a majority of the Regional Board is in excess of the Board's jurisdiction. The NLRA provides that the National Labor Relations Board has the power to determine the organization which shall represent employees for purposes of collective bargaining. (Sec. 9(a) of NLRA). Executive Order No. 9017 [1 War Lab. Rep. XVII; WCDS 19] establishing the National War Labor Board provides that the War Labor Board's powers shall not be construed as superseding or in conflict with the provisions of the National Labor Relations Act. Similarly, Sec. 7(2) of the War Labor Disputes Act [9 War Lab. Rep. VII; WCDS 5] provides that the National War Labor Board must conform to the provisions of the National Labor Relations Act. The National War Labor Board has recognized that it is without authority to designate a different representative for collective bargaining than has theretofore been designated by the National Labor Relations Board. (Chicago Transformer Corp., 14 War Lab. Rep. 666; Montgomery-Ward & Co., 13 War Lab. Rep. 454; Allis-Chalmers Mfg. Co., 11 War Lab. Rep. 518; Phelps Dodge Corp., 11 War Lab. Rep. 71; Lebanon Steel Co., 2 War Lab. Rep. 283).

Furthermore the order of a majority of the Regional Board would require the employers to violate the National Labor Relations Act. The Supreme Court of the United States has construed the provisions of the National Labor Relations Act to mean "that the obligation to treat with the true representative was exclusive and hence imposed the negative duty to treat with no other." (NLRB v. Jones & Laughlin Steel Corp., 301 U. S. 1, 44).

The requirement that the employers enter into negotiations with Local 659 is a requirement which, if obeyed by the employers, would result in their violation of the National Labor Relations Act because the employers may legally negotiate only with the International Alliance as the collective bargaining agent of cameramen.

The proper order which should have been made in this case was an order dismissing the proceeding upon the ground that one of the parties to the proceeding, namely, Local 659, was not the collective bargaining agent of the employees involved in the proceeding. Where an organization has been certified as the collective bargaining agent neither subsidiary organizations nor individual employees should be permitted to institute dispute cases. The duly certified or duly recognized collective bargaining agent is the only party which should be recognized as a disputant. Nothing but chaos can result from the recognition of either individual employees or subsidiary organizations as parties to dispute cases before the Board. Since the International Alliance, the duly designated bargaining representative, is not a party to this proceeding the proceeding should have been dismissed.

VALIDITY OF CONTRACT

The contract between the International Alliance and the employees is a binding contract:

When the employees in the 11 crafts of the International Alliance designated the International Alliance as their bargaining representative, they empowered the International Alliance to engage in collective bargaining with respect to wages, hours, and working conditions. The obligation to bargain collectively includes the obligation to execute a contract. (NLRB v. H. J. Heinz Corp., 311 U. S. 514) Therefore, when the employees in the several crafts designated the International Alliance as their bargaining representative, they empowered the International Alliance to execute contracts on their behalf covering wages, hours, and working conditions.

Employers Blameless

The employers should not be required to ascertain, at their peril, what procedures should be followed by the International Alliance in exercising its functions as bargaining agent. Such inquiry would require the employers to investigate resolutions adopted at private union meetings and otherwise to delve into union affairs which are usually considered the private business of the union. The employers were entitled to deal with the International Alliance as the duly designated bargaining agent. The proper rule was announced by the Kentucky Court of Appeals in Day v. Louisville and Nashville Railroad Co., 175 S. W. (2d) 347, as follows:

"One becoming a member of a labor organization does so for the benefit accorded him in pursuance of the privilege of collective bargaining. The organization itself designates the agents entrusted with the authority to bind the organization and its members. As between themselves, they may agree as to the procedure to be followed in authorizing the agents to agree to specific contracts; but, as between them and the employer, the individual members of the organization may not question the specific authority of their own bargaining agents. After a contract has been entered into, it is not within the province of the court to determine that the procedure agreed upon among the members of the brotherhood, in respect to specific authority of the bargaining agent, has been followed."

There was no lack of good faith on the part of the producers. They had no reason to believe that the International Alliance was in any way limited in its right as the duly certified collective bargaining agent of cameramen to negotiate and conclude a contract. The agent of the local union, Mr. Herbert Aller, had approved the contract and the Executive Committee of the local union had in a wire dated Dec. 28, 1943, advised the employers that their representatives would be authorized to conclude a final and binding contract. If Mr. Aller acted in excess of his authority, that was not the fault of the employers. If the President of the International Alliance acted in excess of his authority, that is not the fault of the employers. If anyone is to blame for the present situation, it is the local union which failed to inform the employers of the limitations which they had attempted to impose upon the powers of the duly certified collective bargaining agent. The following maxim of equity is applicable:

"Where one of two innocent persons must suffer by act of a third, he, by whose negligence it happened must be the sufferer." (Cal. Civil Code, Sec. 3543).

Since there is a binding contract between the employers and the duly certified collective bargaining agent establishing wages, hours, and working conditions for cameramen, there is no basis for an order requiring the employees to negotiate with Local 659.

The majority decision disregards fundamental principles of the law of contracts and the law of agency:

Ostensible Authority

The majority decision recognizes the rule of law "that the principal is bound by the act of his agent, even though the latter has exceeded the authority granted by the principal, if it is found that the principal has given the other party to understand that his agent's authority was not so limited." The majority decision however fails to apply this rule even though all of the facts which would require its application are present.

The majority decision proceeds upon the theory that approval of the agreement by the local was required. For reasons heretofore stated the industry members believe that the agreement of the International Alliance, the duly certified collective bargaining agent, was all that was required. However, if approval of the agreement by the local was required, the evidence shows that Mr. Herbert Aller, business representative of the local and the locals agent for purposes of collective bargaining, approved it. The majority has found that Mr. Aller did not have actual authority to approve the agreement. But this limitation on Mr. Aller's power was concealed from the producers. Mr. Aller was held out to the producers as an agent clothed with power to give final approval to any deal made. He was similarly held out to the president of the International Alliance.

The majority opinion admits that on the question of the ostensible authority of Mr. Aller, "a strong case is made for the contentions of the producers during the earlier phases of the period under discussion." The opinion calls attention to the fact that "the telegram of Dec. 28, 1943, which was addressed to the labor representatives

of the producers, leaves little room for doubt as to the unconditional authority of the local union representatives." The telegram was transmitted to the employers under instructions of the Executive Board of the local union which had full power to "decide the course of action to be taken in any situation consistent with the constitution and by-laws as may be necessary to carry on the business and promote the interests of the local." Neither the constitution nor the by-laws of the local require that contracts be submitted to the membership for approval before becoming effective. The representations which the Executive Board of the local caused to be made to the employers were not in excess of the powers of the Executive Board.

The majority of the Regional Board has found that on April 5, before the final agreement was approved by Mr. Aller, the producers were "put on notice that the membership of Local 659 did not consider the negotiating committee as being vested with powers of final action."

It is very important to note that the panel which heard all of the testimony did not make any such finding. In fact that panel found to the contrary.

The panel's finding is set forth in the last paragraph of p. 14 of the report and recommendations and reads as follows:

"Now the question arises whether the rejection by the membership of the terms agreed to by the committee constitutes a firm and clear disavowal of the authority of the local's representatives. Certainly the producers were not put on notice to that effect by the Executive Board of the local, which had power to do so. There is no evidence that Mr. Casey saw the telegram received by Mr. Aller from the local although he unquestionably knew of the local's dissatisfaction. Parenthetically attention may be called to the fact that this telegram was signed, not by the Executive Board, the principal and source of the Committee's powers, but by an all but anonymous membership."

We call specific attention to the fact that the majority does not refer to the finding of the panel; it simply makes a finding which is contrary to that of the panel. Under well settled principles of administrative law, which the public members of this Board profess to follow, a finding of fact made by a panel is not to be set aside if supported by evidence.

The industry members believe that the evidence does support the finding of the panel. Although Mr. Aller received a wire dated Apr. 5, 1944, and signed "Membership Local 659" which stated "final deal must be submitted to membership before signing," there is no evidence that the wire was called to the attention of the producers. What the producers were advised was that the membership of Local 659 was "not satisfied" and "very unhappy" with the original agreement which Mr. Aller had approved. (Tr. 306; 318; 463). Notification that the membership is "not satisfied" and "very unhappy" with an agreement is not notice that the agreement is not binding. It is not notice that the agreement was subject to the approval of the membership. The producers did not regard the notification of dissatisfaction as an indication that the agreement was not binding. The immediate response of the producers' representative was "You closed a deal, brother, and that settles it."

Mr. Aller did not put the employers on notice that the membership of Local 659 did not consider the negotiating committee as being vested with powers of final action. To the contrary, when confronted with the statement that he had no right to ask the employers to set aside the first deal made on behalf of Local 659 and to enter upon negotiations for a new deal, he said, referring to the local, "The membership is bound by what I have done, but it will be better labor relations if I could sell them the deal." (Tr. 465)

The fact that Mr. Aller received a wire signed "Membership of Local 659" is no evidence whatsoever that such wire was brought to the attention of the producers. In view of the absence of any evidence to the effect that the producers were put on notice that the representations made in the wire of Dec. 28, 1943, were false, there is no basis whatsoever for overturning the finding of the panel that the ostensible authority, which had been established by the telegram of Dec. 28, 1943, was continued in force. The majority of the Board in overruling the panel does not call attention to a single fact which would support the position it has taken. It simply relies on a non-sequitier, i.e. that notice to A is notice to B, for proof of its point. In view of this the finding of the panel should certainly control.

Hotel del Coronado Decision

The majority decision applies to employees a different standard than has heretofore been set up for employers under the same circumstances:

The decision in the Hotel del Coronado case, 17 War Lab. Rep. 74, is squarely in point. It is true as pointed out by the majority opinion in the present case that the hearing officer found the existence of certain circumstances which do not appear in the present case. However, the Hotel del Coronado case decision does not rely upon any of such circumstances. The identical facts relied upon by this Regional Board in the Hotel del Coronado case appear in the present case. If the Hotel del Coronado case is correct, the majority decision in the present case is wrong. The only difference between the decisions in the two cases is that in the Hotel del Coronado case an employer is bound by the acts of an agent who had ostensible authority, whereas in the present case the union is held not bound by the acts of an ostensible agent. The Hotel del Coronado case and the present case effectively set up a "double standard" with respect to employers and unions. Employers are bound by the acts of ostensible agents, but unions under the same circumstances are not bound.

All that needs to be done in order to apply the Hotel del Coronado decision to the present case is to change "Company" to "Union," and to change the reference to the union-security clause to a reference to the entire agreement. We quote the pertinent part of the decision in the Hotel del Coronado case, underlining the substituted words and bracketing omitted words, so that it may be clear to all that the same factors appear in the present case which caused this same Regional Board to reach a different decision in the Hotel del Coronado case.

"We are of the opinion that the union failed to show affirmatively that its acceptance of the provisions of the contract was conditional and that, on the contrary, the affirmative of the evidence is that it was unconditional. The question then arises as to whether, when an unconditional offer and acceptance of provisions in a proposed union contract has been made (during conciliation hearings), either of the parties may thereafter repudiate such an agreement without the consent of the other. It is certainly the law that with any other class of contract, an unconditional offer and acceptance binds the parties. It is also the law that, when one places his agent in the apparent position of having the authority to bind him by a contract, he may not later repudiate the contract made by his agent on the ground that the actual authority of the agent did not extend so far. These are fundamental principles of law and, in our opinion, of justice also and should be applied in cases of this kind.

"Since the weight of the evidence is to the effect that the union acting through its agent, who was apparently authorized to make an unconditional contract with the company, offered unconditionally a contract which was (afterwards) accepted by the company, the Board should direct the union to include in the contract between itself and the company the provisions agreed to by both parties."

So far as the factors are concerned upon which the Regional Board placed reliance in reaching its decision in the Hotel del Coronado case, the only difference between that case and the present case is that in the Hotel del Coronado case an employer was held to be bound by the acts of his ostensible agent, whereas in this case the union is allowed to repudiate the acts of its ostensible agent. In all justice, rules of law should be applied impartially to unions and employers.

The decision of the majority achieves a result which will have the effect of discouraging rather than encouraging the principles of collective bargaining.

Legal Niceties Satisfied

The majority decision points out that a strict application of the law of ostensible authority requires evidence that the ostensible authority be established and conveyed by the principal rather than by the agent and holds that on this score evidence of ostensible authority is inconclusive. In the Hotel del Coronado case this same Regional Board in considering imposing a contract upon an employer was not concerned with such legal niceties. In that case this Board made no mention of any evidence establishing that the principal had held out the agent as having apparent authority. To the contrary, the Board relied entirely upon the fact that the agent held himself out as having the

authority. Despite this we believe that the evidence in the present case satisfies all of the legal niceties of the rule of ostensible authority. The majority of the Board has indicated some doubt that the ostensible authority was established and conveyed by the "principal" rather than by the agent himself. The panel gave this point consideration and made a finding which we submit was entirely proper and cannot be challenged. The panel found as follows:

"Detailed consideration of the testimony and other evidence leads a majority of the panel to the following conclusion respecting the ostensible authority of the committee. The telegram sent to Mr. Casey on Dec. 28, 1943, as quoted above, clearly creates a strong presumption that the local's representatives had official power to conclude a contract. The request that the producers' representatives "Be likewise authorized to negotiate contracts that will be final and binding on their organizations" decisively settles the question as to the extent of the authority, and the reference to counterproposals makes it clear that negotiations beyond mere acceptance of the local's proposal were contemplated. It is true that immediate meetings were requested and that some delay occurred prior to the final meeting, but there is nothing to indicate that the local gave notice at any time of a change in its position.

"Furthermore the telegram of Dec. 28, was sent over three months after the action of the membership upon which the local relies to establish its position. It should be noted also that the telegram cannot be characterized as the act of an agent since it was authorized by the Executive Board itself (See testimony of Herbert Aller, Tr. 152), which under the constitution of Local 659 must be considered the principal for the purposes here considered."

There can be no quarrel with the conclusion of the panel that the Executive Committee was acting as the "principal." That was the effect of the provision of the constitution of the union which created the "Executive Committee" and defined its powers. Since the Executive Committee sent the wire of Dec. 28 and as it was not contended that the provision of the constitution establishing the Executive Committee and defining its powers had ever been changed, it is obvious that the Executive Committee was acting as principal. This union was operated by its Executive Committee just as a corporation is run by its board of directors.

"BALANCE OF EQUITY"

If this case be approached as the majority suggests that it should be upon the basis of a "balance of equity," the decision of the majority is plainly wrong. Unions, like corporations, can act only through agents. In the present case the local union held out to the employers, and for that matter to the duly certified collective bargaining agent of the employees, that the local union's representative at the negotiations would have the power to approve a contract to be binding upon the local union. It appears that from the very beginning the local union was engaged in a tricky procedure.

On Sept. 8, 1943, the local union through Mr. Aller notified the President of the International Alliance, that "the committee that will negotiate will have the full power to act in these negotiations." It appears that at a meeting which the President of the International Alliance had with the Executive Committee of the local union about one year later, one of the representatives of the local union told the President of the International Alliance to his face "that they deliberately framed the phrase that way to fool him, to trip him up." (Tr. 362). There can be no doubt that Mr. Aller deliberately led the employers to believe that he was authorized to approve on behalf of the local any agreement that might be made during the negotiations. The panel found "that the representatives of Local 659 failed to correct this understanding even when given a definite opportunity to do so."

From a practical standpoint it is impossible for an employer to discover the exact extent of the power of a union representative. It would be unfair to require the representative to exhibit minutes of union meetings defining his powers. In many cases such minutes would disclose just how far the union representative could go in negotiations, and a requirement that such minutes be exhibited to an employer would enable the employer to know just what concessions he could expect a union representative to make. The establishment of a rule which would require employers to examine into the extent of a union

representative's power would effectively hamper collective bargaining.

Good faith is a necessary prerequisite of sound industrial relations. Tricky procedure is wholly inconsistent with good faith. This Board should not condone the deceptive and tricky practices which Local 659 followed in the present case. Collective bargaining processes are not encouraged by rules which make deception pay. We agree with the position taken by the Fourth Regional Board in the Pretlow Peanut Co. case, 13 War Lab. Rep. 267, in which that Board stated:

"To take any position other than that the contract is binding might imply that every employer would always deal with union representatives at his peril, taking the risk that, if conditions later made the contract entered into not the most advantageous possible to the union, it would refuse to ratify it. The union cannot be supposed to have intended to discourage employers from entering into contracts with it or other unions in the future, for such action would be injurious to organized labor. Therefore, it could not have been assumed to have done anything except enter into a binding contract when its representatives stated, in answer to direct questions, that they had the power to bind the union, and when it waited more than a month to give any notice of refusal to ratify, though it met in the meantime."

We believe that the decision of the majority in this case is a distinct disservice to the cause of collective bargaining.

AMERICAN SMELTING & REFINING CO.—

Decision of Regional Board II (New York)

In re AMERICAN SMELTING AND REFINING COMPANY [Perth Amboy, N. J.] *and* INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, LOCAL 438 (CIO). Case No. 111-13582-D [1736], July 21, 1945.

VACATIONS — Computation of vacation pay—Inclusion of shift premiums

In computation of vacation pay on basis of straight-time average hourly earnings, shift premiums should be included since, under National Board's policy, only factor to be excluded under term "straight-time earnings" is premium pay for overtime work.

For other rulings see Index-Digest 205.150 in this or other volumes.

Majority decision of Regional Board II (New York) affirming recommendations of hearing officer. Public members concurring: Walter Gellhorn and Howard Lichtenstein. Labor members concurring: Peter K. Hawley and Frazer L. Holzlohner. Employer members dissenting on Par. 1: J. J. Mangan and Daniel C. Williams.

Interim Directive Order

The Regional War Labor Board for the Second Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides certain of the issues in dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Vacations

Vacation pay shall be based upon straight-time hourly earnings inclusive of night-shift differentials.

2. Retroactivity

Adjustments resulting from the provisions of this interim directive order or from a subsequent order or orders issued by this Board in this proceeding shall be effective as of Nov. 10, 1944, expiration date of last contract unless the parties have agreed upon a later retroactive date.

The procedure to be followed in making the retroactive adjustments to the employees who have either quit or been discharged shall be in accordance with the resolution of the National War Labor Board of Apr. 2, 1943 [26 War Lab. Rep. 3].

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor

Board and, unless otherwise directed by the National War Labor Board, shall become operative 15 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree. The remaining issues in dispute between the parties will be determined by the Board at a later date.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall become operative, and in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order immediately operative.

*Report and Recommendations of the Hearing Officer**

PARTIES TO THE DISPUTE

The American Smelting and Refining Co., hereinafter referred to as the company, is a Newark, N. J., plant of the Federated Metals division of the American Smelting & Refining Company engaged in the smelting and refining of non-ferrous metals, of which 100 per cent enters war production directly.

The International Mine, Mill and Smelter Workers Union, Local 488 (CIO), hereinafter referred to as the union, is the exclusive representative for purposes of collective bargaining for production and maintenance employees, exclusive of executive, supervisory, administrative, or professional employees including salaried employees, engineers, chemists, assayers, accountants, watchmen, foremen, and metallurgists.

It represents 105 employees involved in the instant dispute out of a total of 140 employees.

BACKGROUND

The case was certified by the New Jersey State Board of Mediation on Jan. 19, 1945, after the contract had expired and negotiations for renewal contract had broken down. The Conciliation Service of the Labor Department certified the case on Jan. 22, 1945, and a hearing was held on Mar. 5, 1945, at which time the instant case was heard along with the case involving the American Smelting and Refining Company in Perth Amboy, the employees of which are represented by Local 365. Although there were several overlapping issues, the parties to both cases requested that separate reports be filed.

The union has had bargaining relations with the company since 1939, the last contract having expired Nov. 10, 1944. A new contract was executed in January 1945 in full except for the six issues specified above. The parties were last before the Board in case 111-6617-D, decided on July 26, 1944, supplemented Sept. 6, 1944, and amended Sept. 18, 1944.

ISSUES

[The issues in dispute are:]

1. Wages—
   (a) Classifications,
   (b) Starting rate, and
   (c) Reopening clause;
2. Vacations;
3. Sick leave;
4. Severance pay;
5. Guaranteed annual wage; and
6. Retroactivity.

[ED. NOTE: Issue 1, discussed in the hearing officer's report at this point, is omitted.]

2. Vacations

Company's Position

The company points out that in computing vacation pay the night-shift differential should not be included on the following grounds:

(a) Prior to September 1944, night-shift differentials were not provided for either in the plant herein involved or in the industry as a whole. It was not until the National Board, after the action of the Non-Ferrous Metals Commission in a case affecting the western non-ferrous companies [18 War Lab. Rep. 597], ordered shift differentials in an industry traditionally operated on the basis of continuous operations that the question arose.

(b) Shift differentials are granted on the theory that nightwork constitutes an inconvenience but such inconvenience is not suffered when an employee is on vacation. Logically, therefore, the company should not be required to pay a penalty rate for a condition which does not exist. The company states that if night shift is to be included in the computation of vacation

* ED. NOTE: Only that portion of the hearing officer's report relating to vacations is reproduced.

pay, it anticipates untold difficulty in the administration of the award, since the rotating shifts cover all times of day around the clock.

The company believes the matter on hand is analogous to that of overtime premium and notes in relation thereto that the Board will exclude overtime premium in computing vacation pay. It states that the use of the phrase "for work performed" in the following phrase "the company shall pay a night-shift bonus of four cents per hour for work performed on the second shift and of eight cents per hour for work performed on the third shift" indicates that the bonus is payable only while employees are actually working on late shifts. It cites the General Motors Corporation case, 12 War Lab. Rep. 58, in which the directive order provided that vacation pay be based on the employee's rate of pay, not including overtime and night-shift premium. It indicates furthermore that the union, in an amendment dated Sept. 2, 1944, to its contract with Phelps Dodge Corporation agreed as follows:

"* * * It is agreed that night-shift bonus shall be excluded in the vacation allowance. If question arises as to the employees' straight-time rate, the average for the preceding two-week payroll period shall be used."

Union's Position

The union states that the policy of the Board with respect to computation of vacation pay is clear, namely, that vacation pay is to be based on straight-time average hourly earnings, including shift premiums.

Recommendation

It is hereby recommended in accordance with Board policy that vacation pay be computed on the basis of straight-time average hourly earnings including shift premiums. The only factor to be excluded except under unusual circumstances or upon agreement of the parties in the computation of vacation pay, is the overtime rate.

It is the understanding of the undersigned that the phrase "straight-time average hourly earnings" is interpreted to include shift differentials.

[ED. NOTE: Issues 2 through 6, discussed in the hearing officer's report, at this point, are omitted.]

Signed by Miriam Kadin, hearing officer for the Board.

FIRESTONE TIRE & RUBBER CO.—

Decision of Regional Board V (Cleveland)

In re FIRESTONE TIRE AND RUBBER COMPANY [Akron, Ohio] *and* UNITED RUBBER WORKERS OF AMERICA, LOCAL 7 (CIO). Case No. 111-11223 [5-D-1150], Aug. 4, 1945.

CONTRACTS—Reopening of wage issue—Contract provisions — Prior directive order

Union is not entitled to increase in rates of three job classifications since union is barred from raising wage issue at this time by provisions contained both in contract and in prior directive order prohibiting any but industry-wide adjustments in wage rates. Union's contention that its demands are industry-wide in that all firms in industry are being requested to eliminate intra-plant inequalities is rejected since union's demands vary from firm to firm.

For other rulings see Index-Digest 37.600, 37.370, and 225.780 in this or other volumes.

Majority decision of Regional Board V (Cleveland) affirming recommendations of panel. Public members concurring: Frederick H. Bullen, Harry J. Dworkin, and C. M. Finfrock. Employer members concurring: John Briggs, D. D. Riechow, and Lloyd Haney. Labor members dissenting: J. W. Childs, Elmer Cope, and J. F. Schmid.

Directive Order

I. The Regional War Labor Board for the Fifth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. This Board finds that the union during the life of the agreement entered into under date of Apr. 22, 1944, is barred by said contract and by this Board's directive order dated Mar. 1,

1944, from making claim for adjustments in rates of skilled maintenance employees, machinists, and mix-mill operators.

II. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect fifteen (15) days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs, or has otherwise directed or the parties otherwise agree.

*Report and Recommendation of the Panel**

Aug. 14, 1944

ISSUES

1. The request of the company that the union be barred upon the jurisdictional grounds from presenting any of the wage adjustments asked for in the instant case.

2. The request of the union for a 23-cent per hour adjustment in the rates of skilled maintenance employees and machinists.

3. The request of the union for an adjustment of 21 cents per hour in the rates of mix-mill operators.

4. Retroactivity of any wage adjustments made to the date of the certification of the case.

HISTORY AND BACKGROUND

The Firestone Tire & Rubber Company operates extensive rubber and steel products plants at Akron, Ohio.

Local Union No. 7, United Rubber Workers of America, is the executive bargaining agent of the production, maintenance, and service employees in all of these Firestone plants.

A prior proceeding between the same parties originally involving the same or similar questions and some other broader issues, being Case No. NWLB 4993-D (5-D-516), was disposed of by the Regional War Labor Board on Mar. 31, 1944.

On p. 2 of its original brief or so-called statement, the company points out that certain increases were then ordered by the RWLB for certain scheduled maintenance and machine shop employees and mill men; and also that certain increases were then and there denied.

On p. 1 of the union's original memorandum brief, the union points out that during the hearings which preceded the issuance of the aforesaid directive order of Mar. 31, 1944, the union withdrew certain wage demands (that is, demands for a general wage increase) and points out further that neither the questions presented nor those withdrawn prejudice in any way the union's right to participate in new proceedings to obtain wage increases on an industry-wide basis. The union points out that the Firestone directive order of the Regional Board specifically provided that: "The union shall not be barred from participating in efforts to obtain a further modification of wages on an industry-wide basis." Following the aforesaid directive order to wit: on Apr. 22, 1944, the parties signed the current collective bargaining agreement. Art. II, Sec. 2 (a) thereof provides:

"The present differential in base rates and hourly rates shall remain in effect. The present wage scale will be subject to negotiation if conditions economically and in the industry warrant."

The company says that the directive order of Mar. 31, 1944, which granted the aforesaid increases, together with the first sentence of this quoted clause in the existing contract, bars any consideration of the wage increases asked for in the present case.

The union says that the saving clause in said directive order of Mar. 31, 1944, concerning "efforts to obtain a further modification of wages on an industry-wide basis," together with the second sentence of said aforementioned clause in the existing contract, permits the union, to present the issues mentioned in the instant case.

Subsequent in date to both the date of the aforesaid directive order and the date of signing the new contract, Local Union No. 7 presented to the Firestone Tire & Rubber Company an industry-wide program of the URWA. That program included:

1. A demand for a general wage increase;

2. Night-shift bonus;

* Ed. Note: Only that portion of the panel report relating to the jurisdictional problem in considering wage adjustments is reproduced.

3. Correction of inequalities in the rates of skilled maintenance employees and mix-mill employees;

4. Paid lunch period;

5. Liberalized vacation plan.

After following the usual procedure including the intervention of the U. S. Conciliation Service, the issues involved in the industry-wide program evolved by the union were certified to the National War Labor Board. The NWLB, as a matter of general policy, retained jurisdiction on a national basis of a part of the issues involved in the union's 1944 wage program [23 War Lab. Rep. 404]. Those issues involving adjustment of rates of skilled maintenance and milling employees (which are the issues in the instant case), however, were referred back by the National Board to the respective regional boards for consideration and determination.

DISCUSSION OF ISSUES

1. Jurisdictional Problem

Company's Position

The company's position is stated first upon this issue because the company takes the affirmative. Since this is a contract renewal date, the company maintains that, under the terms of the existing contract bewteen the parties, the contract cannot be opened in this interim period.

Adjustments of the type now sought were presented, discussed, and argued at the panel hearings in Cleveland in January 1944 and were part of those asked for at the time the present contract was negotiated.

The union's reservation in the prior Regional Board case at Cleveland was in reference to the general wage increase and did not cover adjustments or intra-plant inequalities which might be claimed at some time during the contract. In the former case, the union admitted that the general wage increase demand then being formulated for the NWLB did not apply to the 33 individual adjustment cases which were then under consideration by the RWLB at Cleveland, and it must be remembered that the two under consideration in this particular case were among those 33. (For this admission by the union, see transcript of the aforesaid case, 5-D-516, Jan. 11 hearing, at bottom of p. 7, and Jan. 12 hearing at bottom of p. 156.)

After this admission, the parties proceeded with the former case before the RWLB and certain adjustments were then determined upon and made. Adjustments were made in both the milling and the maintenance rates. (See p. 2 of company's original brief.)

The balance of the spot adjustments now requested were then rejected. (See p. 9 of the former panel report in the aforesaid case, 5-D-516, where it is said: "The transcript speaks clearly, and the panel is unanimous in a denial of their validity.")

These items were therefore clearly before the previous panel and were not a part of the reservation for subsequent consideration. Subsequent to their rejection, the present contract was completed. It provides:

"The present differential between base rates and hourly rates shall remain in effect."

Union's Position

If the union's present requests were confined to this one company, the contract clause cited by the company might be controlling. However, it is the union's position that conditions "economically in the industry" do now warrant a correction of inequalities. The inequalities advanced and ironed out last March in the former case were for the purpose of obtaining uniformity between different wage rates being paid for a particular maintenance job in the company's different buildings, for example, its mechanical building, its steel products building, its air wing building, its Xylos plant, its reclaim plant, and its other rubber producing plants.

In the instant case, our vision is not limited by the walls of the Firestone company alone—we are complaining of inequalities between maintenance and production workers that are industry-wide.

The adjustments asked for here are not restricted to the Firestone Company alone. The situation the union presents here is not within the terms or contemplation of the first sentence of that clause of the existing contract invoked by the company to bar consideration of the present wage adjustments.

It was the union's hope that this issue would be considered by the National Board on a national basis. For administrative convenience, however, the National Board has referred them back for Regional determination. Since the same issues will be up for decision in other regions and before

other regional boards, there will ultimately be an appeal, no doubt, by one side or the other which will carry these issues to the National Board where the whole question will probably ultimately be determined upon a national basis and by the National Board.

(For further arguments of both parties, pro and con, see transcript in the present case, pp. 15-22, inclusive.)

Discussion

This jurisdictional question is not stated as one of the issues in the union's initial brief. It is raised, however, by the company in its original brief—in fact, it is the only subject originally briefed by the company, and it is set forth by the company as a complete bar to the adjustments asked for.

While the arguments of each side are meritorious, they seem to rest upon the respective emphasis which each side places upon their own interpretation and understanding of the happenings in the former RWLB case decided Mar. 31, 1944, and upon a one-sided choice of the two somewhat conflicting sentences on wages occurring in par. (a), Sec. 2, Art. II, of the existing contract.

To a majority of the panel, the wage issues herein raised seem to lack the necessary uniformity to constitute a true industry-wide wage problem. The union's request for these adjustments varies from plant to plant. At some plants they are asking on behalf of maintenance employees for an increase of only ten cents per hour. Here, they are requesting 23 cents. In some cases, they request an increase for both mix mills and Banbury operators. Here, only an increase for the mills is sought. The quality of the request seems to be industry-wide, but the quantity of it seems to be only plant-wide.

One added factor occurs to a majority of the panel as very significant, if not controlling. Somewhere, after all, the War Labor Board is seeking a stabilization of wages. Admittedly, inequalities affecting maintenance and milling employees were questions under consideration in the January hearings in the previous case. Whether settled or withdrawn, their resurgence in the general demands formulated by the international in February leads one to believe that stabilization is a will of the wisp that never arrives. Perhaps so, but the majority of the panel has the feeling that, when the new contract between the parties was signed, the inequalities here talked about were deemed settled for at least a year. Raised, as they were, as one of the tails to the main dog (a general across-the-board wage increase), they never subsequently (that is, subsequent to presenting the industry-wide program) received any additional attention in actual round table negotiations between the parties.

One of the purposes of contracts being to aid in stabilizing wage rates and working conditions, the majority of the panel believes that not only was the directive of Mar. 31, 1944, intended to stabilize wages of maintenance and milling operators for the time being but that the contract itself was designed to insure for the current year no change in the existing differential between base rates and hourly rates. To hold otherwise opens the door for continuous fragmentary presentation of the inequalities claimed for the same group (maintenance employees etc.), and begets continuing unstabilization.

That the majority of the panel is not alone in this opinion is evidenced by Case No. 111-9999-D in the matter of The Firestone Tire & Rubber Company, Memphis, Tenn., and United Rubber Workers of America, Local No. 186 (CIO), decided Feb. 15, 1945, by the Regional War Labor Board for the Fourth Region, where, in spite of the fact that the second sentence of Par. (a), Sec. 2, Art. II, of our contract was, in the Memphis contract, tacked on to the first sentence by the interjection of the word "however," thereby making the second sentence qualify the first sentence, nevertheless, the Fourth Regional War Labor Board held that the Memphis contract precluded the union from raising wage issues similar to those in the instant case. For these reasons, the majority of the panel feels that, by the terms of the Regional Board directive and the present contract, the union is barred from raising the wage adjustment questions constituting the second and third issues in this case.

The second, third, and fourth issues really fall with the above conclusion, but, having heard the evidence on both sides of these issues and a majority of the panel believing that, in spite of the jurisdictional questions, the request of the union for increases

should be denied, the majority has decided to make recommendations on the latter issues.

[ED. NOTE: Issues 2 through 4, discussed in the panel report at this point, are omitted.]

Signed by Aldrich B. Underwood, representing the public; and W. Andrew, representing employers. Harry R. Doll, representing labor, dissented.

FIRESTONE TIRE & RUBBER CO.—

Decision of Regional Board VIII (Dallas)

In re FIRESTONE TIRE AND RUBBER COMPANY [Port Neches, Tex.] *and* OIL WORKERS INTERNATIONAL UNION, LOCAL 228 (CIO). Case No. 111-14779-D [8-D-433], July 16, 1945.

HOURS OF PAY—Pay for time not worked—Jury duty

Employees reporting for or performing jury duty on regularly scheduled workday are entitled to straight-time pay for such days, despite contention of company that it has no voice in calling employees to appear for jury service and award would provide employees with double compensation, regular pay from company and jury fee from Government.

For other rulings see Index-Digest 65.410 in this or other volumes.

Majority decision of Regional Board VIII (Dallas) adopting recommendation of panel. Opinion by A. Langley Coffey, chairman. Public member concurring: Clifford W. Potter. Employer members dissenting on Part I, Secs. 1, 2, 5, 7 and 8: William R. Bell and Alto B. Cervin. Labor members dissenting with opinion on Part I, Secs. 4, 6, 9, and 10(b): Stephen J. Gall and R. B. James.

Directive Order

I. The Regional War Labor Board for the Eighth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

Sec. 1. Union Security

The Board orders and directs that the following standard maintenance-of-membership provision shall be included in the contract between the parties in so far as the issue of union security is concerned:

"(a) All employees who on July 31, 1945, are members of the Union in good standing in accordance with its constitution and by-laws and all employees who become members after that date shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the Regional War Labor Board with a notarized list of its members in good standing as of that date.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"Neither shall the Employer intimidate or coerce employees into withdrawing from or refraining from joining the Union.

"The final decision and determination as to whether any member of the Union shall withdraw from union membership during the 15-day period herein provided shall be the sole decision and determination of that member. Any member may record his decision to withdraw from the union by giving written notice to the Union, the Company, and the Regional War Labor Board before the 15-day period expires. Receipt of such notice by the Regional Board shall be considered prima facie evidence of the employee's decision.

"(b) If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for de-

termination by an arbitrator to be appointed by the Regional War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"(c) If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties or, if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, the arbitrator will be selected by the Regional War Labor Board on due application. The decision of the arbitrator shall be final and binding upon the parties."

Any party desiring to post or otherwise publish an official explanation by the National War Labor Board of the foregoing maintenance-of-membership provision may use the [standard] form of notice and a statement of the procedure to be followed in administering the maintenance-of-membership provision, in the absence of some other procedure agreed to by the parties [12 War Lab. Rep. XXVIII; WCDS 321].

Sec. 2. Check-Off

The Board orders and directs that the following provision shall be included in the contract between the parties in so far as the issue of check-off is concerned:

"Date ———,194——

"Firestone Tire & Rubber Co.

"Port Neches, Tex.

"You are hereby requested and authorized to deduct from wages due me and payable on the next regular pay day, the sum of $——, being my initiation fee, and on the first pay day of each succeeding month the sum of $——, being my monthly dues to Local Union No. 228 of Oil Workers International Union (CIO), and you are hereby authorized and directed to pay the amount deducted to Local Union No. 228 for my account on or before the——day of the calendar month for which said deductions are made.

"You are further authorized and requested to continue the monthly dues deduction unless written instructions from me to you to advise the discontinuance of such deductions are received.

"Employee"

Sec. 3. Job and Wage Rates

The agreement of the parties, in so far as this issue is concerned, is hereby approved, and the Board hereby directs that the following provision shall be incorporated in the contract between the parties:

"It is agreed that a conference for the discussion of wages and negotiation of wage adjustments for individual rates when a classified wage is found to be below the prevailing rate in the area shall be held upon 30 days' written notice by one party to the other. All wage adjustments agreed upon through such negotiations shall be retroactive to the date of the first meeting and not later than the 30th day of the notice period."

The request of the union that the above provision be supplemented by the inclusion of an additional provision is hereby denied.

Sec. 4. Discharge, Suspension, and Resignation

The request of the union that the company be ordered and directed to place a provision in the contract between the parties which would provide for one week's pay to all employees with one year of service upon termination of their employment is hereby denied.

Sec. 5. Full and Regular Employment

The Board orders and directs that the following provision shall be included in the contract between the parties in so far as the issue of providing full and regular employment is concerned:

"The Company reserves full right to contract work whenever in its opinion such action is necessary. However, it is the desire of the Company to provide as full and regular employment for its employees as possible, and it will use its available working force and equipment before resorting to contracting work where practicable and feasible."

Sec. 6. Vacations

The Board orders and directs that the following standard provision shall be included in the contract between the parties in so far as the issue of vacations is concerned:

"All employees upon accumulating one year or more of service with the employer shall receive a vacation of one week with pay based upon forty (40) hours at straight-time rates; or, if the regular work schedule is more than forty (40) hours a week, such vacation pay shall be determined by the number of hours in the standard workweek under which the Company is operating multiplied by the straight-time hourly rate.

"All employees, upon accumulating five years or more of service with the Employer, shall receive a vacation of two weeks based upon eighty (80) hours at straight-time rates; or, if the regular work schedule is more than forty (40) hours a week, such vacation pay shall be determined by the number of hours in the standard workweek under which the Company is operating multiplied by the straight-time hourly rate."

Sec. 7. Jury Service Pay

The Board orders and directs that the following provision shall be included in the contract between the parties in so far as the issue of jury service pay is concerned:

"Jury Service, Sec. 1. Straight time will be paid while reporting for or performing jury service on an assigned working day, subject to the conditions given in the following paragraph:

"Employees reporting for or performing jury service on an off day will receive no company pay for that day.

"Sec. 2. When an employee is called for jury service, the employee's foreman should be notified promptly. The summons notice is to be presented at the gate personnel office, and a jury service time card secured. This card must have the time excused from court, which should be written in ink and approved by the clerk of the court room from which excused. When jury service is over, the card is to be turned in by the employee to his foreman promptly."

Sec. 8. Shift Differential

The Board declines to pass upon the above issue at this time. The parties are advised that the issue of shift differential will be referred to a tripartite panel to be set up at a later date by the New Case Committee of the Eighth Regional War Labor Board, such tripartite panel to hear evidence on the question of whether or not the base rates of pay of subject company presently in effect reflect that premium pay for night work was considered in the establishment of the straight-time hourly wage rate. The tripartite panel, after hearing evidence submitted by the parties on this issue, will submit their finding of fact for consideration of the Regional Board at which time a final determination of this issue will be made by the Board.

The Board expressly retains jurisdiction of this issue.

Sec. 9. Sick Benefits

The request of the union that the company be ordered and directed to place a sick benefit provision in the contract between the parties is hereby denied.

Sec. 10(a). Overtime

The Board orders and directs that the following provision shall be incorporated in the contract between the parties in so far as the issue of overtime is concerned:

"The Company shall pay time and one-half for all hours worked in excess of eight (8) in any one workday and time and one-half for all hours worked in excess of forty (40) in any workweek."

Sec. 10(b). Holidays Not Worked

The request of the union that the company be ordered and directed to place a provision in the contract between the parties which would provide for the payment of straight time for holidays not worked is hereby denied.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

The effective date of such agreement shall be Mar. 3, 1945, such date being the effective date of the presently existing jointly executed partial contract between the parties or any other such date as the parties may mutually agree upon.

The termination date of such agreement shall be Mar. 2, 1946, such date being one year from the effective date as shown above or in accordance with the termination provision of the presently existing jointly executed partial contract between the parties or any such date as the parties may mutually agree upon.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect fourteen (14) days from the date of mailing hereof, such date of mailing being July 16, 1945, unless in the meantime a petition for review is filed with the Eighth Regional War Labor Board pursuant to the accompanying appeals procedure, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree. However, the date of expiration of the escape period provided in Sec. 1, Part I, above shall not be affected by the filing of a petition for review of that provision or any other provision of this order.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the Eighth Regional War Labor Board seeking review of portions of this order, either party may request the Eighth Regional War Labor Board to make the remaining portions of the order immediately effective.

Opinion of the Board

VACATIONS

COFFEY, Chairman:—In this case, it is claimed by the labor members in a dissenting opinion that the Board erred in not granting the union's request for a vacation allowance of one week after one year's service and two weeks after two years' service. The Board, with labor dissenting, adopted the majority recommendation of the panel and directed to be made a part of the contract the standard vacation plan of one week after one year and two weeks after five years.

The public members of the Board could not find in the presentation made by the union that character of proof required by Field Memorandum No. 117 to show that vacations of one week after one year and two weeks after two years is established within the synthetic rubber industry for the area in question by a clear and well defined practice, the following of which in this case would not be unstabilizing to the area or the industry and that it would be fair and equitable to employer and employee under all the circumstances to follow such practice.

The panel's report is no help on the question of fact, for the reason [that] no evidentiary facts are set forth therein, and no finding of fact is made on the disputed issue. Accordingly, it is necessary to go back into the record and examine the briefs of the parties and such other documentary evidence as may be a part of the record in an effort to arrive at a fair and just decision on the disputed issue.

The union's position is that the liberalized vacation plan proposed is consistent with vacation benefits now received by other employees covered by agreements of the international union in the Texas-Louisiana Gulf Coast area. The company proposes the standard plan and contends that it is in accordance with and conforms to the area and industry practice.

The union relies on contracts which it has with the petroleum refining industry in the area to support its contention that the liberalized vacation plan should be made a part of the directive order in this case. It is no longer subject to dispute that, in the petroleum refining industry in the Gulf Coast area where labor contracts are in existence, the prevailing vacation practice is one week after one year and two weeks after two years; however, the union does not present any evidence of the practice in the synthetic rubber industry. It argues, first, that the vacation practice of the petroleum refining industry should be extended to the synthetic rubber industry. Also, it argues that, since the synthetic rubber industry is a comparatively new industry in the area, the Board should disregard industry practice and grant the liberalized vacation plan to the employees of the subject company based on area practice.

For the purpose of establishing area practice, we do not think it sufficient to show only practice in a particular industry in the area as the union has done in this case. Neither do we think it just and proper to exclude the nonorganized industries in the area from consideration. Where either party relies on area practice, evidence should be submitted of the area practice as such and not the practice of some particular segment of all industry in the area. From the evidence presented, there was no way to determine the number of employees involved, the number of different types of industry

in the area, the overall number of industries having the more liberalized vacation plan, and the number of employees affected. Accordingly, we think the union's proof falls short of a proper showing of area practice.

Furthermore, we have concluded that, until a new industry has developed sufficient experience to support a more liberalized vacation plan, the standard plan is the only one supportable under wage stabilization principles in the absence of a proper showing of area practice. We find no support in National Board policy for extending the refinery practice, which is the development of an old established industry within the area, to the new synthetic rubber industry.

This Board has fixed bracket rates for the synthetic rubber industry separate and apart from those of the petroleum refining industry. This must be accepted as some showing that there is no direct competitive relationship between the synthetic rubber industry and the petroleum refining industry. Since the synthetic rubber industry has been grouped unto itself and since the union does not show a more liberalized vacation plan established within that industry, there appears no basis on which to grant other than the standard plan.

We recognize the confusion existing in the application of the industry-area criteria, but it has come to be the policy of this Board that, when speaking of "industry-area practice," this Board means the practice of either the industry affected by the dispute or, alternatively, the area in which the dispute arose. Generally, the "industry" means the grouping of businesses which this Board has utilized in fixing bracket rates or the grouping of individual concerns which have a direct competitive relationship to the company involved in the dispute case. The Board likewise recognizes that the term "area" has an alternative meaning; and "area" may be either the immediate community in which the dispute occurs or the labor market of which that community is a part. In the application of the terms, the Board first considers the industry practice where there is a basis of comparison between plants in given industry and must first determine the unstabilizing effect upon that industry where other than stabilized limits are involved. If no comparison of plants within an industry within an area is possible, then the Board may look to the area practice.

When the request rests upon an alleged industry practice, it is necessary to show that granting the request would not introduce an unstabilizing innovation into the industry. When a request rests upon an alleged area practice, it must be shown that the practice is generally prevailing in the area. Where area practice is a proper consideration, the Board will introduce an innovation into an industry only if it can be established that the practice is already so prevalent in a particular community that nonobservance of it by a few individual employers would create friction.

We believe our action in this case is consistent with National Board policy.

Dissenting Opinion of Labor Members

GALL and JAMES, Labor Members:—The labor members of the Eighth Regional War Labor Board respectfully dissent in the above case on the following issue:

VACATIONS

We feel that the Board in denying the union's request of one week's vacation after one year and two weeks' vacation after two years did not take into consideration the practice in the industry or area. In our opinion, the Regional Board has acted counter to the policy of the National Board.

The union supported its position fully with Union Exhibit B, which shows that the practice in the area is almost 100 per cent in line with the union's request. This exhibit shows that the companies in the area granting one week's vacation after one year and two weeks after two years, are as follows:

Texas Company Office, Port Neches; Texas Company Pipe Line, Port Neches; Pure Oil Refinery, Port Neches; Neches Butane Products Company, Port Neches; Gulf Refinery, Port Arthur; Texas Company Refinery, Port Arthur; Great Lakes Carbon, Port Arthur; Texas Company Case and Pkg. (Can and Container Mfg.), Port Arthur; Southern Acid Company, Port Arthur; Magnolia Petroleum Company Ref., Beaumont; and Southern Acid and Sulphur, Beaumont; all in Texas.

The above named companies are all within the immediate vicinity of the Firestone Tire and Rubber Company. In addition to these companies, the union's exhibit reflects that the following companies grant one week

after one year and two weeks after two years:

Sinclair Refinery, Corpus Christi; Taylor Refinery, Corpus Christi; A. M. S. Company Refinery, Corpus Christi; Republic Pipe Line Company, Corpus Christi; Wardner Recycling Company, Bishop; Costal Recycling Company, Bishop; Gulf Plains Recycling Company, Bishop; Humble Refinery, Ingleside; United Carbon Company, Ingleside; Pan American Refinery, Texas City; Southport Refinery, Texas City; Republic Refinery (2 wks. after 1 yr., 1 wk. after 6 mo.), Texas City; Pan American Pipe Line, Texas City; Sinclair Refinery, Houston; Sinclair Rubber, Houston; Sinclair Pipe Line Company, Houston; Houston Pipe Line Company, Houston; Standard Pipe Line, Houston; Crown Central Refinery, Houston; Shell Refinery (Pasadena), Houston; Texas Co. Refinery (Galena Park), Houston; Texas Pipe Line Company, Houston, all in Texas; Sinclair Terminal, Westwego, La.; Claymore Refinery, Peltus, Tex.; Abercrombie & Harrison Refinery, Sweeney, Tex.; Chalmette Pet. Corp., Chalmette, La.; United Pipe Line, Refugio, Tex.; General American Trans. Corp., St. Rose, La.; and Cities Service Terminal, St. Rose, La.

The first group of companies named constitute the major industry in this area and, we think, reflect the practice in the area. We are also of the opinion that this plant of the Firestone company is in the petroleum industry, since the processes used are similar, and the product is produced from petroleum. In fact, this operation is a department of a refinery. This company receives its "charge stock" from the surrounding refineries through the Neches Butane Products Company.

The majority of the operating employees of the Firestone Tire and Rubber Company are former employees of petroleum refineries. We think this should be given consideration. These employees should be granted the same vacation benefits as they formerly had. In our opinion, they accepted jobs with this company in the interest of the war effort.

We do know that, because of the similarity of operations, the Firestone company had to have employees with previous petroleum refinery operating experience in order to quickly man their plant.

The second group of companies listed above are all within the Gulf Coast area. Most of them are within a radius of 75 to 100 miles of the Firestone company. In the opinion of the labor members, the union supplied the Regional Board with overwhelming evidence that its position on this issue should be sustained.

The labor members respectfully submit that in light of the evidence in this case the Regional Board's decision should be reversed and respectfully request the National Board to sustain the minority opinion.

Report and Recommendations of the Panel *

May 4, 1945

BACKGROUND

The Firestone Tire & Rubber Company of Port Neches is a government owned facility. The plant is operated as an agent for the Rubber Reserve Company which is also a government instrumentality. Negotiations were opened for original agreement in September 1944. All questions were agreed to with the exception of the terms listed under the heading of Issues in Part 3 of the union's brief.

ISSUES

1. Maintenance of Membership and Deduction of Dues;
2. Job and Wage Rates;
3. Overtime;
4. Discharge, Suspension, and Resignation;
5. Sick Benefits;
6. Vacations;
7. Jury Service;
8. Full and Regular Employment; and
9. Shift Differential.

[ED. NOTE: Issues 1 through 6, discussed in the panel report at this point, are omitted.]

Issue No. 7. Jury Service

Union's Position

Union requests pay while on jury service to be paid by the company. Its contention is in short that an employee should not suffer a loss while on jury service. That an employee could not afford to serve as a juror for the amount of pay he would receive as jury compensation.

Company's Position

The company has no voice in summoning its employees to appear for jury service, therefore should not be

* ED. NOTE: Only that portion of the panel report relating to jury service is reproduced.

called upon to incur the additional expense; that the employees request, if granted, would result in an employee being paid by the company as if he had worked on his regular shift and in addition he would be paid by the Government for his jury service.

Recommendation

Panel recommends pay for jury service asked for be allowed.

[ED. NOTE: In a separate opinion submitted by the labor representative, it is stated that: "It is the finding of this panel and [its unanimous recommendation that] the following substitution of the union's proposal be directed by the Board: To-wit—The company shall make up the difference to the employee between the amount of pay received for jury service and the amount he would have received on his job.]

[ED. NOTE: Issues 8 and 9, discussed in the panel report at this point, are omitted.]

Signed by W. H. Tobin, representing the public; E. L. Lorehn, representing the employer; and Lawrence Bench, representing labor.

REPUBLIC CREOSOTING CO.—

Decision of Regional Board IV (Atlanta)

In re REPUBLIC CREOSOTING COMPANY [Mobile, Ala.] *and* UNITED MINE WORKERS OF AMERICA, DISTRICT 50 (Ind.). Case No. 111-15379-HO, July 18, 1945.

CONTRACTS—Wage reopening contrary to contract terms

Contract barring reopening of wage question except by agreement of parties is properly opened for consideration of wages where contracting employer joined with union after dispute came to Board, in signed stipulation for submission of issue of "wages" to hearing officer, rather than panel, for recommendation to Board. Employer is held to have thereby waived contractual right to bar opening of wage question even though stipulation did not expressly so state.

For other rulings see Index-Digest 37.370, 37.600, and 225.780 in this or other volumes.

Majority decision of Regional Board IV (Atlanta). Public members concurring: Paul N. Guthrie and Harry D. Wolf. Public member dissenting with opinion: William M. Hepburn. Labor members concurring: W. M. Alexander, C. B. Gramling, and H. S. Williams. Employer members dissenting with opinion: Frank A. Constangy, R. F. Howell, and R. H. White.

Directive Order

I. The Regional War Labor Board for the Fourth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Wages

A minimum wage rate of 55 cents shall be established, and a 5-cent across-the-board increase shall be granted.

2. Retroactivity

Increases granted above shall be retroactive to Mar. 15, 1945.

The procedure to be followed in making retroactive payment to employees who have quit or been discharged shall be in accordance with the National Board's resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 14 days from the mailing date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any

part thereof shall take effect (subject only to the provisions of Par. V), and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the National War Labor Board or the Regional War Labor Board to make the remaining portions of the order immediately effective.

V. As required by Executive Orders No. 9250 and 9328, as supplemented by the directive of May 12, 1943, this order shall in any event become effective only upon determination by the Office of Price Administration that the wage increases ordered will not require any change in price ceilings or, if no such determination is made, then upon approval by the Director of Economic Stabilization. The parties will be promptly notified of such action.

As provided in Sec. 802.40 of the "Rules of Organization and Procedure of the National War Labor Board," this order is subject to review by the National War Labor Board at any time on its own motion.

Dissenting Opinion of Public Member

July 21, 1945

CONTRACT REOPENING

HEPBURN, Public Member:—In this case the hearing officer, appointed by the Fourth Regional War Labor Board pursuant to a stipulation to submit a dispute over wages to the hearing officer for recommendation to the Board, excluded from the case the question of whether the parties were not bound by an existing contract and recommended that the minimum rate be increased to 55 cents and that an increase of 5 cents across-the-board be granted, retroactive to Mar. 15, 1945. The question of the effect of the existence of a contract was excluded on the ground that to consider that point would be to go outside of the terms of the stipulation, which stated that the issue was "wages."

The wages recommended do not seem to be high. Indeed, in view of current living costs in Mobile, one may question how a man can live on any less. This is not the question, however, in my view of the case; but it is rather whether there was not a contract between the parties which would have prevented the Board [from] reaching a decision in conflict with the contract.

The point on which I am unable to agree with a majority of the Board is a preliminary one. The majority decided that, although there was a contract in effect covering the year beginning Mar. 15, 1945, and including the matter of wages subject to change only by mutual consent of the parties, the Board should not consider the contract provisions concerning wages. This conclusion was reached because the parties had signed a stipulation to submit their dispute over wages to a hearing officer for recommendation to the Board and was reached in spite of the fact that there was no express statement in the stipulation which withdrew the contract as one of the elements of the dispute. It seemed to me that the hearing officer's skillful analysis of the case failed to recognize a simple and important rule —that parties to a contract are bound by it unless they have agreed clearly not to be bound. One can say that this is a technical approach, and it is. But it is something more. Without stressing the moral significance of fidelity to a contract, I would suggest that, from the point of view of wise policy, a temporary advantage gained through evasion of the contractual obligations in respect to wages will prove a disadvantage in the long run. In this case it does not mean that wages were frozen since the union could have terminated the whole contract and negotiated as part of a new contract the question of wages.

I have said that parties to a contract are bound by it unless they have agreed not to be, and I recognize that there is room for disagreement in this case as to whether they had not agreed not to be. I must recognize this room for disagreement in view of the fact that the case came twice before the Board, the first time before a six-man Board which divided equally and the second time before a nine-man Board on which I served and which decided against the company's contention on this point by a vote of five to four. But the truth of the matter is that the Board, in deciding that the company had waived its contractual rights on the wage question, based this decision on a stipulation of highly ambiguous nature. The party claiming the benefit of the waiver should have to show it affirmatively. I cannot see that signing a stipulation to send a dispute of an issue simply described as "wages" to a hearing officer rather than to a panel shows such a waiver, and I do

not believe it was intended to when signed. The decision on this point was based on speculation and not on any clear statement by the parties that the hearing officer or the Board should ignore existing contractual relationships.

Other aspects of this problem were discussed when the case was presented to the Board, but, since the basic reasons for disagreement were the same, it will not be worth while to elaborate them here. The source of the difficulty is clear and should be avoided in the future—a loose statement of the issue to be submitted, from which ambiguity was almost bound to result.

Dissenting Opinion of Employer Members

July 24, 1945

CONTRACT REOPENING

Background

WHITE, HOWELL, and COSTAGNY, Employer Members:—The parties in this case have had a contract for several years. Contained in this contract are two provisions which are pertinent to this controversy: One, the provision in the wage clause which expressly provides that wages may be reopened by mutual consent of the parties at any time, and a second provision, which is a fairly standard United Mine Workers' contract termination provision, which is as follows:

"* * * It is agreed that contract signed Mar. 19, 1943, shall remain in effect through Mar. 15, 1945, and continue in full force and effect from year to year thereafter or until terminated by either party by giving written notice to the other party of its intention so to terminate, which notice shall be at least 30 days prior to the 15th day of March of the year in which termination is to be effective."

On Feb. 17 (three days late), the union wrote the following letter to the company:

"Please be advised that Local Union No. 12121 does not wish to terminate the present existing contract now in force between the company and the union but desires to add to the existing contract certain amendments; such amendments are a proposal for negotiation, but, should the company and the union fail to agree, this proposal is not to be misconstrued that the present existing 'contract' is terminated pending the outcome of amended desires.

"Please notify at your earliest convenience a date for conference."

This letter, on its face, clearly removed the demand of the union and the subsequent negotiation from the status which would arise under the termination clause of the contact and, since the issue to be negotiated is wages, placed it squarely within the scope of the mutual consent provision of the wage clause—the only manner in which wages could be adjusted except by termination of the contract.

The company replied to this letter and advised the union that it would be glad at any time to discuss matters of mutual concern. Thereafter, the union made its specific wage demand upon the company. The company investigated the union's demands with particular respect to the situation prevailing in the industry and in the area and at a subsequent meeting advised the union that it did not feel that its wage demands were justified and therefore would not agree to a reopening of wages. A conciliator was called in, and, after discussing the matter with both parties, he apparently (the record is not too clear on the exact transaction) suggested to and urged upon the parties that they agree to have the matter heard by a hearing officer of the War Labor Board. In any event, the parties signed a standard form which is used in this type of case, in which the specification of a hearing officer is checked in an appropriate blank space and under the specification "issues" to be decided there appears only the single word "wages."

In the brief filed with the hearing officer, the company set forth the history of its negotiations and its refusal to agree to a wage adjustment under the mutual consent clause. The company further sets forth in this brief, in full, its position that, under the terms of the contract between the parties and in the light of the express terms of the letter from the union, in the absence of mutual agreement, the contract provisions regarding wages could not be reopened.

Discussion

The hearing officer erroneously treated this contention of the company, namely, that its contract prohibited reopening of wages, as a chal-

lenge to the jurisdiction of the War Labor Board and refused to consider it. The further basis of the hearing officer's recommendation was that the company, having signed a stipulation which stipulated as the issue the word "wages," was now estopped from availing itself of the defense under the contract, namely, that the contract terms precluded the reopening of wages except by mutual consent. The case came to the Regional Board, and, when heard by a six-man Board, resulted in a tie vote, it was ultimately referred to a nine-man Regional Board, and that Board, by a vote of five to four, upheld the hearing officer's recommendation and proceeded to award a wage increase.

We contend that the majority of the Board reached an erroneous decision and one which, in the light of experience in industrial relations, is likely to yield unforeseen results. If this matter had been under an arbitration agreement, it is conceded that the arbitrator, in determining an issue stipulated as "wages," would have been charged with the examination of the agreement between the parties to determine whether the issues were properly raised under the terms of that agreement. It is also admitted that, if this matter had come to a tripartite panel of the Board, the panel's determination as to what was in issue would have been based on the position of the parties in their negotiations prior to the hearing. Clearly, the evidence as established by the company's brief to and the record at the time of the hearing officer's hearing establishes the fact that the company in the negotiations availed itself of its contract defenses. To say now that a company, because it has chosen the middle alternative, namely, that of the hearing officer of the War Labor Board rather than a panel of the War Labor Board or an arbitrator between the parties, is subjected to a different interpretation of its so-called stipulation is completely unjustified. This will unquestionably create an unwillingness on the part of employers to accept the somewhat more speedy administrative procedure of a hearing officer. We believe that, if a different rule is to apply in cases in which a hearing officer is to be designated than is to apply in cases where a panel is designated, it is the duty of the War Labor Board and of the Conciliation Service to forewarn the parties. Certainly there is nothing in the experience or the record of the Board heretofore which would put any party on notice that a more restrictive limit as to the defenses will be placed on stipulations to a hearing officer than is placed on stipulations before a panel.

Moreover, when the War Labor Board permits one of the parties, on the mistaken theory of being equitable or charitable, to evade express contract provisions, as it has done in this case, in order to avoid what seemed to the majority of the Board a hardship, it does violence to the position for which labor has contended for many years, namely, that it must have an express written labor contract in order that parties clearly understand their rights and obligations under their collective bargaining agreements. If collective bargaining written agreements are to be construed because of alleged inequitable results in the cases not to mean what they say, then great damage will have been done to the whole concept of written collective bargaining contracts. We believe it is appropriate in this connection to simply point out that the contract provision which we contend is entitled to a literal construction is a standard United Mine Workers contract provision. It is, we believe, related to the familiar slogan of that union—"No contract, no work." It enables that union, when it has a dispute as to specific contract provisions, to terminate the whole contract and bargain as to the whole document.

Athough there is no direct evidence to this effect, it must be conceded that this standard contract provision is embodied in the contract at the instance of this union. This is not a case of small union David opposing a corporate Goliath. This union has been sufficiently strong in the past few years, in spite of the war, to, from time to time, with some degree of success, defy the Government of the United States. This employer is a small local enterprise. The United Mine Workers, on the other hand, is well financed, manned, and fully equipped to take care of itself in any controversy with this company or even with the War Labor Board. In every instance where the situation has been reversed and the union has demanded literal application of the terms of its contract, the Regional War Labor Board has given the union the benefit of literal interpretation. We cannot find justification for reversing this precedent merely because the position of the parties is here reversed.

The War Labor Board is charged by statute with the upholding of collective bargaining contracts and, in disputes, with the ordering of provisions customarily contained therein. The War Labor Board cannot assume to read, by tortured construction, into a contract provision which provides that it may only be terminated upon due notice language which makes these words mean that upon due notice it may be amended by any means other than mutual consent.

We believe it is also appropriate to call attention to the rather strange mental gymnastics which resulted in the wage increase ordered by the Board after it had proceeded to construe, contrary to the plain language of the contract, to permit the unilateral reopening of a clause which could only be reopened by mutual consent. The Board brushed aside completely the undisputed evidence that the wage rates in effect in this company were comparable and virtually identical with its four competitors in its industry in the area. As a matter of fact, in the whole Southeast, the evidence indicated that there were only two creosoting companies whose rates were higher. It further brushed aside the evidence that these rates were comparable to those of lumber companies in the industry and in the area (for the information of the Board majority, creosoting is the treatment of lumber). Instead of acting on this evidence as, by Regional Board policy, it was required to do, the Regional Board ordered the wages increased because a gypsum company, an asphalt company, two kraft paper companies, a pulley works, and a steel works in the area were paying higher rates.

The majority of the Board, in basing this decision on the euphemism of "equity" to the workers, has overlooked the language of the statute under which it operates—"the Board * * * shall provide for terms and conditions to govern relations between the parties which shall be fair and equitable to *employer and employee* * * *" (War Labor Disputes Act, Sec. 8(a)(2) [19 War Lab. Rep. XXIX; WCDS 301]. (Italics supplied.)

Cumulative
Index-Digest
Covering Volume 26 to Date

Rulings by the National War Labor Board, its regional boards and commissions, and the courts made in the decisions appearing in this volume, represented by headnote paragraphs, appear in the following pages arranged and classified by subject matter.

Headings of the principal divisions are arranged alphabetically as are also the headings of the subdivisions, with a few exceptions to bring related subjects together. The purpose of the classification is to afford rapid reference to rulings regarding any particular subject matter.

Numerical designations are given to each main heading and all subheadings to facilitate ready reference to the place in the Index-Digest at which material under such headings and subheadings appears. The same and additional headings with their numerical designations appear in other volumes of WAR LABOR REPORTS, *thus assuring ease in locating rulings on a particular topic in all volumes.*

Main topics appear in capital letters and are designated by numbers followed by a decimal point but without digits beyond the decimal points. All subtopics and their subdivisions are designated by numbers having three digits after the decimal point. Subtopics immediately follow their designating numbers. Subdivisions thereof at the first level are separated from their numbers by one dash; those at the second level, that is, subdivisions of a subdivision, are separated from their numbers by two dashes. In some instances finer or less fine topical breakdown is used in one volume as compared to others.

For assistance in using the Index-Digest of the volumes as a unit, the reader is referred to the "Key" to Volumes 1-20, issued as a special supplement to 25 War Lab. Rep., No. 1 (June 27, 1945). Under each subject heading appear names of relevant cases with volume and page references to headnotes and text.

Rulings made by regional boards, commissions, and courts are so indicated in the Index-Digest. All other rulings are those of the National Board.

The main topics of the classification scheme appear below. Those topic headings which appear with a prefixed star (★) will be found in the Cumulative Index-Digest in this issue; those without the prefixed star appear in other volumes and may appear in later cumulations in this volume.

Classification

(Continued on next page)

★ *Indicates topics appearing in Index-Digest in this issue.*

Classification—Contd.

124 Occupational Expenses
129 Payroll Deductions
132 Physical Examinations
★ 135 Preferential Shop
★ 140 Premium Wage Rates
143 Proceedings before Board
145 Promotions
148 Reemployment
150 Review of Subordinate Agencies' Decisions
★ 155 Seniority
160 Settlement Procedures (not elsewhere classified)
161 Severance Pay
162 Shift Schedules
163 Slowdowns
★ 165 Strikes
169 Training Programs
★ 172 Union Affairs
175 Union-Employer Cooperation
★ 185 Union Recognition
190 Union Security (not elsewhere classified)
★ 195 Union Shop
★ 205 Vacations
★ 225 Wage Adjustments (not elsewhere classified)
★ 235 Wage Differentials
★ 245 Wages—Cost-of-Living Adjustments
★ 250 Wages—Going Wage Rates
255 Wages—Hiring Rates
★ 260 Wages—Incentive Wage Systems
★ 265 Wages—Inequalities
★ 275 Wages—Job Rates
280 Wages—Maximum Rates
★ 285 Wages—Minimum Rates
290 Wages—Reconversion
★ 295 Wages—Substandard Rates
300 Wages—Trainee Rates
305 War Labor Disputes Act
310 War Risk Insurance
★ 330 Working Conditions
350 Work Standards

★ *Indicates topics appearing in Index-Digest in this issue.*

10. ARBITRATION

10.100 Subject Matter of Arbitration

10.101 —In general

Contract should provide that provision requiring annual wage guarantee is not subject to arbitration, as ordered by Regional Board. (1) Union claims that "to grant company right to arbitrate permanent layoffs if business conditions dictate such course would threaten security of workers" and (2) provision for no arbitration of guaranteed wage clause is in effect in 95 per cent of union's contracts with other employers in industry in area. Company's appeal for review is denied.—Melville Shoe Corp., 26 War Lab. Rep. 30.

Employer's request that apprentice ratio be liberalized is denied since there is no likelihood of companies being able to hire more apprentices at present and union has, in past, showed willingness to relax ratio to meet particular needs. Contract should, however, provide for arbitration of any disputes arising from union's refusal to permit exceptions.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

10.103 —Arbitrability of issue

Parties should submit to board of arbitration under contract question of whether change in "employee evaluation plan" made by company and resulting in reduction in rates within established rate range is arbitrable. If question is found to be arbitrable under contract, arbitrators should determine it finally. Industry members dissent, contending that Board, by directing arbitration, is avoiding ruling on novel question, namely, whether employers have right under merit rating plans to give "demerits" within rate ranges as well as merit increases.—Boeing Airplane Co., 26 War Lab. Rep. 50.

10.124 —Discharge

Parties whose grievance procedure does not provide for arbitration should submit to arbitration grievances presented by union over (1) alleged discharge of employee without just cause and (2) refusal to reinstate employee returning to work after sick leave. Issue to be arbitrated in second dispute is whether company's refusal to reinstate employee was based on report of plant physician or on some other reason which is not ground for refusal to grant reinstatement under contract.—Goodyear Aircraft Corp., 26 War Lab. Rep. 143.

10.127 —Grievance under union contract

Parties whose grievance procedure does not provide for arbitration should submit to arbitration grievances presented by union over (1) alleged discharge of employee without just cause and (2) refusal to reinstate employee returning to work after sick leave. Issue to be arbitrated in second dispute is whether company's refusal to reinstate employee was based on report of plant physician or on some other reason which is not ground for refusal to grant reinstatement under contract.—Goodyear Aircraft Corp., 26 War Lab. Rep. 143.

10.137 —Interpretation of contract

Immediate submission to umpire under contract is required as to any question concerning disciplinary action taken by company against (1) employees who were suspended for violating shop rule and (2) employees who walked out in sympathy with suspended employees. Union may present to umpire question as to whether and to what extent union has right under existing contract to negotiate subject of shop rules.—General Motors Corp., 26 War Lab. Rep. 53.

10.150 —Merit increases

Parties should submit to board of arbitration under contract question of whether change in "employee evaluation plan" made by company and resulting in reduction in rates within established rate range is arbitrable. If question is found to be arbitrable under contract, arbitrators should determine it finally. Industry members dissent, contending that Board, by directing arbitration, is avoiding ruling on novel question, namely, whether employers have right under merit rating plans to give "demerits" within rate ranges as well as merit increases.—Boeing Airplane Co., 26 War Lab. Rep. 50.

10.173 —Suspension

Parties in process of negotiating first contract who have agreed verbally on grievance procedure not terminating in arbitration should submit to arbitration dispute over company's suspension of 20 employees for refusal to perform work

assigned by their supervisors. Arbitrator should decide whether company's action was unreasonable or arbitrary under circumstances of case.—Glenn L. Martin Co., 26 War Lab. Rep. 144.

10.196 —Work rules

Immediate submission to umpire under contract is required as to any question concerning disciplinary action taken by company against (1) employees who were suspended for violating shop rule and (2) employees who walked out in sympathy with suspended employees. Umpire may consider application of rule under all circumstances of case which include fact that rule was not in effect in plant from which suspended employees had been recently transferred. Union may present to umpire question as to whether and to what extent union has right under existing contract to negotiate subject of shop rules.—General Motors Corp., 26 War Lab. Rep. 53.

15. BONUS PAYMENTS

15.050 Attendance Bonus

Region III (Philadelphia)

Company's request that Board order discontinuance of attendance bonus provision of prior contract is granted since, among other things, (1) attendance bonuses are not usually approved by WLB and (2) scheduled seven-day workweek in effect when bonus was originally approved has been reduced to six-day workweek. (Region III—Philadelphia)—Armstrong Cork Co., 26 War Lab. Rep. 90.

15.416 Discontinuance of Bonus

Region III (Philadelphia)

Company's request that Board order discontinuance of attendance bonus provision of prior contract is granted since, among other things, (1) attendance bonuses are not usually approved by WLB and (2) scheduled seven-day workweek in effect when bonus was originally approved has been reduced to six-day workweek. (Region III—Philadelphia)—Armstrong Cork Co., 26 War Lab. Rep. 90.

15.800 Wage Increase to Offset Discontinued Bonus

Union's request for increase to compensate for alleged inequalities caused by discontinuance of incentive bonus is denied since job rate adjustments previously directed by Board adequately compensate for discontinuance of bonus.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

20. CHECK-OFF

20.100 Compulsory Dues Deduction

20.110 —Combined with membership maintenance

★ Union representing employees of interstate bus company is entitled to standard maintenance-of-membership and compulsory check-off provisions.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

20.300 Voluntary Dues Deduction

20.325 —Check-off with escape clause

Region VII (Kansas City)

Union whose existing contract provides for maintenance of membership without escape clause and for voluntary check-off is awarded non-revocable check-off provision to apply to all employees who do not, within 15 days of date of Board's order, notify company that they do not wish to submit to check-off arrangement. Escape period is provided on theory that employees must have free opportunity to escape from union-security clauses included in contracts by Board order. (Region VII—Kansas City)—Airtherm Mfg. Co., 26 War Lab. Rep. 220.

20.700 Reason for Granting Check-Off

20.715 —Dues collection difficulties

20.722 ——Physical barriers to collection

Region III (Philadelphia)

Union of restaurant employees, whose contract provides for modified form of union shop, is granted automatic check-off clause where delinquency in dues payments has been problem of increasing seriousness to union because of high turnover of personnel and scattered location of stores involved. (Region III—Philadelphia)—Labor Standards Assn., 26 War Lab. Rep. 231.

20.779 —Responsible union

Responsible union is entitled to voluntary check-off with proviso that neither party should coerce any employee into signing dues deduction certificate. Regional Board's order denying check-off because of small size of bargaining unit and because company permitted dues collection on company property is accordingly reversed.—General Motors Corp., 26 War Lab. Rep. 145.

20.790 —Union shop, enforcement

Region III (Philadelphia)

Union of restaurant employees whose contract provides for modified form of

union shop, is granted automatic check-off clause where (1) delinquency in dues payments has been problem of increasing seriousness to union because of high turnover of personnel and scattered location of stores involved and (2) union has refrained from requiring discharge of members not in good standing. (Region III—Philadelphia)—Labor Standards Assn., 26 War Lab. Rep. 231.

20.810 Reason for Denying Check-Off

20.865 —Representation question

★ Uncertified and unrecognized union claiming to represent employees of intrastate concern is not entitled to maintenance of membership or check-off since it is against Board policy to determine union-security issues involving union which has not been certified or recognized as bargaining agent. Regional Board's award of such provisions is vacated.—Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

32. COLLECTIVE BARGAINING

32.400 Obligation to Bargain

32.415 —Change in company ownership

★ Certified union representing employees of company which is found to have changed its corporate structure in order to avoid duty of bargaining is entitled to maintenance of membership and other contract terms determined by Regional Board, provided that, if National Labor Relations Board finds that union's certification is not applicable to successor company, maintenance-of-membership clause should become null and void and remainder of contract should be subject to termination. Regional Board's order providing that directed terms should become effective only upon finding by NLRB that certification continues in effect is vacated.—F. H. Vahlsing, Inc., 26 War Lab. Rep. 287 (*amending* 22 War Lab. Rep. 606).

32.820 Unit for Bargaining

32.857 —Unit determined by NLRB

Region V (Cleveland)

Union certified by NLRB as bargaining representative of patternmakers and patternmaker apprentices is entitled to represent employees classified as helpers if they are doing approximately same work as patternmakers or patternmaker apprentices where, subsequent to NLRB determination, it was discovered that company had classification of helpers. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

37. CONTRACTS

37.350 Duration of Contract

37.365 —Extension of contract

Board vacates Regional Board's order directing inclusion in contract of clause providing that, if notice of termination or desire to revise agreement is given during war emergency, contract should be extended beyond termination date until new agreement is reached or matter is resolved by War Labor Board.—Alabama Mills, Inc., 26 War Lab. Rep. 12.

37.370 —Reopening provision

★ Union is entitled to provision in contract entitling it to reopen contract on ten days' notice in event of change in national wage policy, despite company's objections that such clause would work hardship on it since it is working on fixed-rate war contracts.—Goodyear Aircraft Corp., 26 War Lab. Rep. 279.

★ Petition for review of Regional order reducing straight-time hours and salaries is denied but denial is without prejudice to either party's right to reopen wage issue in event of change in national wage stabilization policy.—Reno & Sparks Nevada Grocery Industry, 26 War Lab. Rep. 296 (*amending* 21 War Lab. Rep. 308).

Region IV (Atlanta)

★ Contract barring reopening of wage question except by agreement of parties is properly opened for consideration of wages, where contracting employer joined with union, after dispute came to Board, in signed stipulation for submission of issue of "wages" to hearing officer, rather than panel, for recommendation to Board. Employer is held to have thereby waived contractual right to bar reopening of wage question even though stipulation did not expressly so state. (Region IV—Atlanta)—Republic Creosoting Co., 26 War Lab. Rep. 345.

Region V (Cleveland)

★ Union is not entitled to increase in rates of three job classifications since union is barred from raising wage issue at this time by provisions contained both in contract and in prior directive order prohibiting any but industry-wide adjustments in wage rates. Union's contention that its demands are industry-wide in that all firms in industry are being requested to eliminate intra-plant inequalities is rejected since union's demands vary from firm to firm. (Region V—Cleveland)—Firestone Tire & Rubber Co., 26 War Lab. Rep. 335.

37.600 Interpretation of Contract

Region IV (Atlanta)

★ Contract barring reopening of wage question except by agreement of parties is properly opened for consideration of wages where contracting employer joined with union, after dispute came to Board, in signed stipulation for submission of issue of "wages" to hearing officer, rather than panel, for recommendation to Board. Employer is held to have thereby waived contractual right to bar reopening of wage question even though stipulation did not expressly so state. (Region IV—Atlanta)—Republic Creosoting Co., 26 War Lab. Rep. 345.

Region V (Cleveland)

★ Union is not entitled to increase in rates of three job classifications since union is barred from raising wage issue at this time by provisions contained both in contract and in prior directive order prohibiting any but industry-wide adjustments in wage rates. Union's contention that its demands are industry-wide in that all firms in industry are being requested to eliminate intra-plant inequalities is rejected since union's demands vary from firm to firm. (Region V—Cleveland)—Firestone Tire & Rubber Co., 26 War Lab. Rep. 335.

37.822 Ratification of Contract

Region X (San Francisco)

★ Contract which was not ratified by local union's membership as required by resolution adopted at union meeting is not valid and binding, despite contention of company that it was clearly understood that all participants in negotiations were authorized to preclude binding agreement on behalf of their respective parties. Injustice that may be done to employers by reopening negotiations is outweighed by resultant damages to stable relationship from compelling union members to accept agreement they rejected. (Region X—San Francisco)—Motion Picture Producers Assn., Inc., 26 War Lab. Rep. 318.

41. DEFINITIONS

41.650 Status Quo

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute. Board, however, vacates that part of Regional order which (1) held that company had violated Regional Board's preliminary status quo order by making reinstatement of newly transferred employees conditional upon observance of shop rule and (2) ordered company to grant back pay to such employees for days lost between preliminary and final status quo orders.—General Motors Corp., 26 War Lab. Rep. 53.

46. DISCHARGE AND REINSTATEMENT

46.200 Reason for Discharge

46.206 —Contract violation

Region I (Boston)

Contract should include clause agreed to by parties under which employer will discharge any member of union who does not comply with union laws or contract working conditions within 24 hours after receiving notice from union. (Region I—Boston)—U. S. Rubber Co., 26 War Lab. Rep. 85.

46.213 —Fighting

Company should reinstate with back pay and full seniority employee with twelve years' seniority discharged for violating strictly-enforced no-fighting rule, where discharged worker was deliberately provoked into attacking much younger, more robust employee with approximately three years' seniority, who wanted to obtain discharge of senior employee in order to protect his own job. As penalty for knowing violation of company's rule, employee should be penalized by denial of back pay for approximately three months of total time lost from work.—Lion Oil Refining Co., 26 War Lab. Rep. 46.

46.245 Union activities

Region I (Boston)

★ Company was justified in discharging union member who, during rest periods, conducted mass meetings at which company was attacked and ridiculed and who, on several occasions, came late to work, with excuse that he had been distributing union leaflets. Though union contended discharge was unfair labor practice, NLRB official refused to issue complaint in view of fact that company did not object to discussions during rest periods among small groups of workers but only to "organized aspects" of gatherings

which employees in question conducted. (Region V—Boston)—Fafnir Ball Bearing Co., 26 War Lab. Rep. 308.

46.350 Reinstatement by Board Order

46.410 —Reinstatement pending settlement of dispute

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute. Board, however, vacates that part of Regional order which (1) held that company had violated Regional Board's preliminary status quo order by making reinstatement of newly transferred employees conditional upon observance of shop rule and (2) ordered company to grant back pay to such employees for days lost between preliminary and final status quo orders.—General Motors Corp., 26 War Lab. Rep. 53.

46.425 —Reinstatement with back pay

Company should reinstate with back pay and full seniority employee with twelve years' seniority discharged for violating strictly-enforced no-fighting rule, where discharged worker was deliberately provoked into attacking much younger, more robust employee with approximately three years' seniority, who wanted to obtain discharge of senior employee in order to protect his own job. As penalty for knowing violation of company's rule, employee should be penalized by denial of back pay for approximately three months of total time lost from work.—Lion Oil Refining Co., 26 War Lab. Rep. 46.

49. EMPLOYEES' BENEFITS

49.001 In General

★ Employer is not obligated to restore practice of giving free meals to cafeteria employees on request of union where there was no showing that abolition of free meals coincident with introduction of new wage schedule resulted in wage cut and no supporting practice in the area or industry exists.—Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 247.

49.300 Insurance Benefits

Region I (Boston)

Union's request for employer-financed insurance plan of type which is uniform in area is refused where company contended, among other things, that it already has contributory group life insurance plan in effect in all its plants and that to order another form of insurance for one plant only would have far-reaching repercussions on company's structure. (Region I—Boston)—U. S. Rubber Co., 26 War Lab. Rep. 85.

Region X (San Francisco)

Union's request that three wholesale jewelers contribute to group insurance plan administered by union is denied despite panel's findings that (1) 96½ per cent of firms and 99 per cent of similar employees in jewelry industry in area are covered by union's plan; (2) National Board has policy of awarding insurance plans under extraordinary circumstances, and (3) overwhelming area practice present in instant case constitutes such extraordinary circumstance. (Region X—San Francisco)—San Francisco Wholesale Jewelers, 26 War Lab. Rep. 78.

49.800 Sick Benefits

Regional Board's order directing company to grant 6 days' sick leave per year with full pay is vacated, despite fact that such plan is prevailing practice in industry in area, since Board will not order sick leave plans in dispute cases in absence of one of two following "unusual" circumstances: (1) In cases where unusual health hazards might justify paid sick leave, and (2) in cases where comparison of total benefits under other plans in operation at same company indicate inequity to employees involved in particular dispute.—Melville Shoe Corp., 26 War Lab. Rep. 30.

Company which has liberal group health insurance plan for employees with one or more years of service should grant three days' sick leave to employees with 6 to 12 months' service in accordance with its counterproposal to union's demand for six days' sick leave for all employees.—Melville Shoe Corp., 26 War Lab. Rep. 30.

★ Employees engaged in loading shells are not entitled to paid sick leave where employer compensates employees at two-thirds' pay for time lost due to industrial accidents prior to beginning of workmen's compensation payments. Regional Board's order granting six days' paid sick leave because of hazards of industry, accordingly, is vacated.—J-M Service Corp., 26 War Lab. Rep. 239 (amending 17 War Lab. Rep. 809).

55. ENFORCEMENT OF ECONOMIC STABILIZATION ACT

55.700 Unauthorized Wage Reductions

Territorial Board (Honolulu)

★ Company is ordered to restore, retroactively to date of its discontinuance, special premium paid drivers working without helpers which was instituted without Board approval. Company, having bound itself to pay special rate, even though unauthorized, could not later discontinue it without consulting Board. In view of fact that premium is excessive and unstabilizing, however, parties should negotiate and submit to Board for approval more reasonable allowance to go into effect after company has complied with retroactive requirement of order. (Territorial Board—Honolulu)—Dairymen's Assn., Ltd., 26 War Lab. Rep. 314.

60. GRIEVANCES

60.100 Right to Present Grievances

60.105 —Absence of lawful bargaining agent

★ Uncertified and unrecognized union claiming to represent employees of intrastate concern is entitled to establishment of grievance machinery under which employees may be represented by union steward in presentation of grievance and by union committee in furthering processing thereof. Grievances recognizable under procedure, however, are only those relating to interpretation or application of directed terms and conditions of employment, and Regional Board's order establishing procedure is amended accordingly.—Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

60.160 Means of Presenting Grievances

60.169 —Individual presentation

★ Employee may present grievance either individually or in presence of shop committeeman or, if employee so desires, grievance may be presented by shop committeeman, union to be notified of all grievances. Regional Board's order providing that grievances should be presented in presence of committeeman or by committeeman is amended accordingly.—Auburn Spark Plug Co., 26 War Lab. Rep. 240.

★ Individual employees are entitled to present grievances to company, provided company notifies union of grievances filed and negotiates with union concerning disposition of all grievances except those involving exclusively some question of fact or conduct peculiar to employee lodging grievance. Regional Board's order excluding individual employee from participation in grievance adjustment except in first step is amended accordingly, where company claimed Regional Board's order is in violation of grievance proviso (Sec. 9(a)) of Wagner Act.—Ohio Brass Co., 26 War Lab. Rep. 250.

60.200 Definition of Grievances

60.220 —Grievance scope in absence of lawful bargaining agent

★ Uncertified and unrecognized union claiming to represent employees of intrastate concern is entitled to establishment of grievance machinery under which employees may be represented by union steward in presentation of grievance and by union committee in furthering processing thereof. Grievances recognizable under procedure, however, are only those relating to interpretation or application of directed terms and conditions of employment, and Regional Board's order establishing procedure is amended accordingly. —Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

60.600 Pay for Grievance Representatives

★ Regional Board's order directing company to compensate union representatives for earnings lost while handling grievances is remanded for reconsideration, where company contended decision was in violation of National Board policy against ordering such compensation in dispute cases in absence of prior company practice.—Ohio Brass Co., 26 War Lab. Rep. 250.

60.700 Grievance Procedure

60.715 —Arbitration of grievances

★ Parties should negotiate arbitration clause to be included in their contract grievance procedure. If they fail to reach agreement in 30 days, issue should be returned to Board.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

60.800 Subject Matter of Grievances

60.818 —Merit increases

★ Employer who has granted merit increases to between ten and thirty per cent of employees each quarter should negotiate with union objective standards of performance to be used in making quarterly reviews, claims of discrimination or improper application of such standards to be submissible to grievance procedure and arbitration.—Edward Ermold Co., 26 War

Lab. Rep. 296 (amending 20 War Lab. Rep. 629).

65. HOURS OF WORK

65.189 Call-In Time

Employee requested to work but sent home because of lack of work should receive minimum pay of three hours at his regular hourly rate, even though employee is prevented from working by existence of work stoppage in which he is not participating.—Firestone Rubber & Metal Products Co., 26 War Lab. Rep. 1.

65.300 Meal Period

★ Employees working overtime are not entitled to be paid meal period where panel finds that (1) existing meal allowance of 60 cents is liberal when compared to industry and area practice and (2) demand for paid meal period does not conform to industry and area practice. Regional Board's order granting half hour's paid meal period when employees were required to work 1.5 hour's overtime without prior notice is vacated.—Carter Ink Co., 26 War Lab. Rep. 243.

65.410 Pay for Time Not Worked

Region VIII (Dallas)

★ Employees reporting for or performing jury duty on regularly scheduled workday are entitled to straight-time pay for such days, despite contention of company that it has no voice in calling employees to appear for jury service and award would provide employees with double compensation, regular pay from company and jury free from Government. (Region VIII—Dallas)—Firestone Tire & Rubber Co., 26 War Lab. Rep. 339.

65.500 Reduction of Working Hours

65.508 —Curtailment of operations

Region V (Cleveland)

Union of patternmakers is entitled to clause in first contract providing that there shall be no layoffs as long as there is sufficient work to provide employees average of 24 hours' work per pay period. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

65.538 —Straight-time hour reduction

★ Employees are not entitled to adjustment of rates necessary to maintain weekly salaries at level prevailing before Regional board reduced straight-time hours from 58 to 48 weekly. Petition for review of Regional order reducing hours and salaries is denied but denial is without prejudice to either party's right to reopening wage issue in event of change in national wage stabilization policy.—Reno & Sparks Nevada Grocery Industry, 26 War Lab. Rep. 296 (amending 21 War Lab. Rep. 308).

65.730 Travel Time

Employees of ordnance plant are not entitled to portal to portal pay, despite contention of union that employees must travel as much as 15 minutes from plant gate to place where they are required to report. Board is desirous that miscellaneous adjustments normally designed to meet special situation or problem should be worked out by parties themselves and Board has not, therefore, solved these issues except in unusual circumstances.—E. I. duPont de Nemours & Co., 26 War Lab. Rep. 67.

65.800 Waiting Time

See Wages—Incentive Wage Systems, 260.124.

75. JOB CLASSIFICATIONS

75.050 Adjustment of Classifications

Airframe company and union should evaluate cafeteria jobs and place them within labor grades which are now applied to production and maintenance work. Company's main competitor in area has slotted its cafeteria jobs into its factory labor grades and similar slotting in instant case should eliminate whatever intra-plant inequities now exist in instant company.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

Region III (Philadelphia)

Increased rate ranges previously approved by Board on joint application by parties should be applied, as demanded by union, so that all employees will occupy same relative position within new range as they occupied under old wage scale. Company's contention is rejected that preservation of existing intra-plant relationships under new rate ranges will result in average increase in excess of that originally approved by Board. (Region III—Philadelphia)—Atlantic Steel Castings Co., 26 War Lab. Rep. 102.

75.300 Establishment of Classifications

75.330 —Union approval of classifications

Regional Board order providing that company should grant union permission to review job classifications is modified to limit such review to "new" job classifications, where union's demands on this issue related to new classifications.—Zephyr Mfg. Co., 26 War Lab. Rep. 155.

77. JOB PROTECTION

77.050 Apprenticeship Rules

Employer's request that apprentice ratio be liberalized is denied since there is no likelihood of companies being able to hire more apprentices at present and union has, in past, showed willingness to relax ratio to meet particular needs. Contract should, however, provide for arbitration of any disputes arising from union's refusal to permit exceptions.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

77.220 Guaranteed Earnings

Contract should provide guarantee of 44 hours' work weekly for 52 consecutive weeks per year for full-time workers and for five nights and a Saturday weekly for 52 consecutive weeks per year for regular part-time employees where such provision is in effect in 95 per cent of union's contracts with other employers in industry in area. Company's petition for review of Regional Board's order directing such clause is denied.—Melville Shoe Corp., 26 War Lab. Rep. 30.

Contract should provide that provision requiring annual wage guarantee is not subject to arbitration, as ordered by Regional Board. (1) Union claims that "to grant company right to arbitrate permanent lay-offs if business conditions dictate such course would threaten security of workers" and (2) provision for no arbitration of guaranteed wage clause is in effect in 95 per cent of union's contracts with other employers in industry in area. Company's appeal for review is denied.—Melville Shoe Corp., 26 War Lab. Rep. 30.

77.260 Hour Reduction Before Layoffs

Region V (Cleveland)

Union of patternmakers is entitled to clause in first contract providing that there shall be no layoffs as long as there is sufficient work to provide employees average of 24 hours' work per pay period. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

78. JOB VACANCIES

78.300 Filling Vacant Jobs

Board vacates Regional Board's order providing that positions occupied by regular full-time or regular part-time employees but which become vacant for any reason whatsoever must be filled immediately by company with another worker, despite fact that such clause is in effect in 95 per cent of contracts which union has with other employers in industry in area. Company claimed that clause would require it to maintain full complement of salesmen regardless of future curtailment of business.—Melville Shoe Corp., 26 War Lab. Rep. 30.

82. JURISDICTION OF BOARD

82.100 Basis of Jurisdiction

Dispute of union with employer who has ceased business and moved to other state should be settled on merits by Regional Board since final decision in such situation may be rendered to extent that useful purpose will be served thereby.—Trav-Ler Karenola Radio & Television Corp., 26 War. Lab. Rep. 172.

82.300 Concurrent Jurisdiction with NLRB

82.307 —Bargaining unit

Region V (Cleveland)

Union certified by NLRB as bargaining representative of patternmakers and patternmaker apprentices is entitled to represent employees classified as helpers if they are doing approximately same work as patternmakers or patternmaker apprentices where, subsequent to NLRB determination, it was discovered that company had classification of helpers. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

82.500 Intrastate Business, Jurisdiction

★Uncertified and unrecognized union claiming to represent employees of intrastate concern is not entitled to maintenance of membership or check-off since it is against Board policy to determine union-security issues involving union which has not been certified or recognized as bargaining agent. Regional Board's award of such provisions is vacated.—Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

82.850 Refusal of Jurisdiction

82.874 —Issue within NLRB jurisdiction

★Certified union representing employees of company which is found to have changed its corporate structure in order to avoid duty of bargaining is entitled to maintenance of membership and other contract terms determined by Regional Board, provided that, if National Labor Relations Board finds that union's certification is not applicable to successor company, maintenance-of-membership

clause should become null and void and remainder of contract should be subject to termination. Regional Board's order providing that directed terms should become effective only upon finding by NLRB that certification continues in effect is vacated. —F. H. Vahlsing, Inc., 26 War Lab. Rep. 287 (*amending* 22 War Lab. Rep. 606).

82.891 —Plant no longer operating

★ Board refuses to act on union's request for union-shop clause since plant involved has been closed. Decision is without prejudice to union's right to reopen issue in event plant resumes operations.—Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 247.

82.930 Substantive Limitation on Jurisdiction

82.944 —Recognition dispute

★ Certified union representing employees of company which is found to have changed its corporate structure in order to avoid duty of bargaining is entitled to maintenance of membership and other contract terms determined by Regional Board, provided that, if National Labor Relations Board finds that union's certification is not applicable to successor company, maintenance-of-membership clause should become null and void and remainder of contract should be subject to termination. Regional Board's order providing that directed terms should become effective only upon finding by NLRB that certification continues in effect is vacated.—F. H. Vahlsing, Inc., 26 War Lab. Rep. 287 (*amending* 22 War Lab. Rep. 606).

★ Uncertified and unrecognized union claiming to represent employees of intrastate concern is not entitled to maintenance of membership or check-off since it is against Board policy to determine union-security issues involving union which has not been certified or recognized as bargaining agent. Regional Board's award of such provisions is vacated.—Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

110. MAINTENANCE OF MEMBERSHIP

110.100 Reason for Awarding Maintenance of Membership

110.101 —In general

★ Union representing employees of interstate bus company is entitled to standard maintenance-of-membership and compulsory check-off provisions.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

110.126 —Employer hostility to union

Union whose membership was "wholly dissipated" by unfair labor practices of company is not entitled to award of preferential hiring in addition to maintenance of membership to restore union's representative status. Regional Board's order directing both maintenance of membership and preferential shop is modified by elimination of preferential-hiring clause. —Ellis-Klatscher Co., 26 War Lab. Rep. 161 (*amending* 21 War Lab. Rep. 485).

110.165 —Responsible union

Union of newspaper employees is entitled to maintenance of membership, despite finding of Newspaper Commission that union was irresponsible on grounds that it (1) demanded changes in contract prior to expiration, (2) repudiated agreement made by union representatives prosecuting case before Commission, and (3) failed to assume responsibility for strict maintenance of contract. Commission's order denying maintenance of membership is therefore reversed where Commission found that union had kept its no-strike pledge and had democratic constitution. Commission is requested, in view of Board's action on maintenance of membership issue, to issue order on union's request for check-off.—New York Herald-Tribune, 26 War Lab. Rep. 18 (*reversing* 22 War Lab. Rep. 430).

110.220 Reason for Denying Maintenance of Membership

110.260 —Irresponsible union

Board reverses order of Newspaper Commission which denied maintenance of membership on finding that union was irresponsible where Commission also found that union had kept its no-strike pledge and had democratic constitution.—New York Herald-Tribune, 26 War Lab. Rep. 18 (*reversing* 22 War Lab. Rep. 430).

110.279 —Strike after no-strike agreement

Regional Board properly denied, for six-month period, maintenance-of-membership clause of prior contract, because union members engaged in four strikes. Such denial, however, should not bar consideration of issue in new case presently pending before Board and maintenance of membership should be restored to union effective from termination of six-month penalty period if union's record since issuance of Regional order is found to be satisfactory.—Bower Roller Bearing Co., 26 War Lab. Rep. 185.

110.220 Reason for Denying Maintenance of Membership

110.281 —Union not bargaining agent

★Uncertified and unrecognized union claiming to represent employees of intrastate concern is not entitled to maintenance of membership or check-off since it is against Board policy to determine union-security issues involving union which has not been certified or recognized as bargaining agent. Regional Board's award of such provisions is vacated.—Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

110.480 Conditional Maintenance - of - Membership Award

★Certified union representing employees of company which is found to have changed its corporate structure in order to avoid duty of bargaining is entitled to maintenance of membership, provided that, if National Labor Relations Board finds that union's certification is not applicable to successor company, maintenance-of-membership clause should become null and void.—F. H. Vahlsing, Inc., 26 War Lab. Rep. 287 (*amending* 22 War Lab. Rep. 185.

110.897 Renewal of Maintenance-of-Membership Clause

Regional Board properly denied, for six-month period, maintenance-of-membership clause of prior contract because union members engaged in four strikes. Such denial, however, should not bar consideration of issue in new case presently pending before Board, and maintenance of membership should be restored to union effective from termination of six-month penalty period if union's record since issuance of Regional order is found to be satisfactory.—Bower Roller Bearing Co., 26 Lab. Rep. 185.

114. MANAGERIAL FUNCTIONS

114.875 Work Force Size

Board vacates Regional Board's order providing that positions occupied by regular full-time or regular part-time employees but which become vacant for any reason whatsoever must be filled immediately by company with another worker. Company claimed that clause would require it to maintain full complement of salesmen regardless of future curtailment of business.—Melville Shoe Corp., 26 War Lab. Rep. 30.

135. PREFERENTIAL SHOP

135.200 Hiring Preference for Union Members

135.220 —Hiring preference combined with membership maintenance

Union whose membership was "wholly dissipated" by unfair labor practices of company is not entitled to award of preferential hiring in addition to maintenance of membership to restore union's representative status. Regional Board's order directing both maintenance of membership and preferential shop is modified by elimination of preferential-hiring clause. —Ellis-Klatscher Co., 26 War Lab. Rep. 161 (*amending* 21 War Lab. Rep. 485).

140. PREMIUM WAGE RATES

140.200 Holiday Premium

140.230 —Award of holiday premium

Region III (Philadelphia)

Transit company employees are entitled to time and one-half for work performed on any one of four specified annual holidays but, in accordance with industry practice, are not entitled to be paid when holiday is not worked. (Region III—Philadelphia) — Philadelphia Transportation Co., 26 War Lab. Rep. 120.

140.278 —Pay on holidays not worked

Employees are not entitled to straight-time pay for six annual holidays not worked, as ordered by Regional Board, where company contends that there is complete lack of industry, area, or company practice to support such order.—Paraffine Cos., 26 War Lab. Rep. 162.

★Employees are not entitled to straight-time pay for holidays not worked since such payment is contrary to industry and area practice. Regional Board's order granting pay for religious holidays not worked is, therefore, vacated.—M. Davidson & Sons, 26 War Lab. Rep. 270.

Region III (Philadelphia)

Transit company employees are entitled to time and one-half for work performed on any one of four specified annual holidays but, in accordance with industry practice, are not entitled to be paid when holiday is not worked. (Region III—Philadelphia) — Philadelphia Transportation Co., 26 War Lab. Rep. 120.

140.400 Overtime

140.415 —FLSA-exempt employees

★ Overtime for interstate bus drivers on regularly assigned runs other than straight-away runs should begin after 8 hours in a spread of 10, as requested by union, rather than after 8 hours in a spread of 11, as at present.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

Region III (Philadelphia)

Restaurant employees in five department stores are entitled to receive time and one-third for hours in excess of 8 a day or between 40 and 44 a week and time and one-half for all hours in excess of 44 a week. Premium pay ordered will correct intra-plant inequity both within unit comprising restaurant employees and between restaurant employees and remaining department store employees. (Region III —Philadelphia)—Labor Standards Assn., 26 War Lab. Rep. 231.

140.500 Seventh-Day Promium

140.549 —Time and one-half for seventh day

★ Interstate bus drivers working on their regular day off are entitled to receive not less than eight hours' pay at time and one half their regular rate.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

140.550 Shift Premium

140.565 —Nightwork premium

Newspaper Commission's denial of night-shift premiums for editorial employees is affirmed. If issue should arise in connection with new contract, however, Commission is requested to examine issue in light of Board's decisions since date of Commission's order and in light of any changed circumstances since issue was last considered.—New York Herald-Tribune, 26 War Lab. Rep. 18.

Region III (Philadelphia)

Transit company employees are entitled to premium of four cents per hour for all work performed between 6 p.m. and 6 a.m. despite fact that no important industry practice exists supporting award, since nightwork premiums are so generally paid throughout industry in general. Premiums shall not be put into effect, however, until award has been "pre-reviewed" and approved by National Board. (Region III—Philadelphia) — Philadelphia Transportation Co., 26 War Lab. Rep. 120.

140.589 —Second-shift and third-shift premiums

Union's request that lace manufacturers establish second-shift premium is denied since lace manufacturing is part of textile industry and second-shift premiums are not generally paid in textile industry, having been denied by National Board in recent textile cases.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

Plant protection employees in powder plant are entitled to night-shift premiums of four and six cents for work on second and third shifts respectively. Regional Board's order granting five and and ten cents on basis of area practice is amended accordingly, Regional Board having resolved doubt in favor of premium although employer claimed that base rates included compensation for night work.—Atlas Powder Co., 26 War Lab. Rep. 142 (*amending* 21 War Lab. Rep. 196.)

★ Board's prior order directing company to establish second-shift and third-shift premiums of four and six cents respectively is interpreted as not requiring company to add such premiums to base pay for incentive workers for purpose of computing incentive pay since purpose of order was to establish uniform amounts of shift premiums for all employees.—Sheet Glass Cos., 26 War Lab. Rep. 246.

Region V (Cleveland)

Employees of company manufacturing industrial electric motor controls are entitled to have present night-shift premiums of five cents for second shift and ten cents for third increased to ten cents for both second and third shifts on basis of Regional Board's resolution that night-shift differential of ten cents an hour shall be granted for plants in electrical industry. Company's contention that area practice must govern is rejected. (Region V—Cleveland)—Electric Controller & Mfg. Co., 26 War Lab. Rep. 109.

140.600 Sixth-Day Premium

140.601 —Application of sixth-day premium

★ Under contract requiring company to pay time and one-half for sixth day of workweek, each day of the first five on which the company fails to make eight hours of work available being counted as a day worked, employer is not obligated to pay time and one-half for sixth day when one of the first five is a holiday, which, in accordance with contract, is not worked and is paid for at straight time.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 282.

140.670 Special Premium Rate

Territorial Board (Honolulu)

★ Company is ordered to restore, retroactively to date of its discontinuance, special premium paid drivers working with-

out helpers which was instituted without Board approval. Company, having bound itself to pay special rate, even though unauthorized, could not later discontinue it without consulting Board. In view of fact that premium is excessive and unstabilizing, however, parties should negotiate and submit to Board for approval more reasonable allowance to go into effect after company has complied with retroactive requirement of order. (Territorial Board—Honolulu)—Dairymen's Assn., Ltd., 26 War Lab. Rep. 314.

155. SENIORITY

155.290 Exception to Seniority Provisions

Region V (Cleveland)

Board reverses prior order and grants union's request for discontinuance of clause of prior contract which provided that employees hired subsequent to Sept. 6, 1943, should be subject to replacement upon conclusion of war. Union contended, among other things, that retention of clause would permit favoritism in layoffs and that existing 30-day probationary period gives company adequate opportunity to weed out undesirables. (Region V—Cleveland)—Reynolds Metal Co., Inc., 26 War Lab. Rep. 95 *(reversing* 24 War Lab. Rep. 360).

155.400 Layoff and Rehiring

155.420 —Seniority as preference basis

As applied to layoffs, reemployment, transfers, promotions, and demotions, seniority should govern where ability and skill are substantially equal. Regional Board's order providing that seniority shall be governing factor only if ability is relatively equal is modified accordingly. —Mines Equipment Co., 26 War Lab. Rep. 148.

155.500 Promotion Preference

155.540 —Length of service as preference basis

As applied to layoffs, reemployment, transfers, promotions, and demotions, seniority should govern where ability and skill are substantially equal. Regional Board's order providing that seniority shall be governing factor only if ability is relatively equal is modified accordingly.—Mines Equipment Co., 26 War Lab. Rep. 148.

155.580 Supervisory Employees

Employees promoted to supervisory positions not covered by contract are entitled to retain their seniority rights for duration of war.—Firestone Rubber & Metal Products Co., 26 War Lab. Rep. 1.

155.600 Transfers

As applied to layoffs, reemployment, transfers, promotions, and demotions, seniority should govern where ability and skill are substantially equal. Regional Board's order providing that seniority shall be governing factor only if ability is relatively equal is modified accordingly. —Mines Equipment Co., 26 War Lab. Rep. 148.

165. STRIKES

165.100 Board Procedure in Strike Cases

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute.—General Motors Corp., 26 War Lab. Rep. 53.

165.400 No-Strike Agreement in Contract

165.445 —Violation of no-strike, no-lockout clause

Contract should provide that there shall be no strikes or lockouts for period of contract. Regional Board's order providing for no strikes, lockouts, interference with production, and picketing and directing that any employee, supervisory or otherwise, who violates or advocates violation of contract should be disciplined on first offense and discharged on second offense is vacated.—Alabama Mills, Inc., 26 War Lab. Rep. 12.

165.500 Penalty for Strike After No-Strike Agreement

165.540 —Union security denial

Regional Board properly denied, for six-month period, maintenance-of-membership clause of prior contract because union members engaged in four strikes. Such denial, however, should not bar consideration of issue in new case presently pending before Board, and maintenance of membership should be restored to union effective from termination of six-month penalty period if union's record since issuance of Regional order is found to be satisfactory.—Bower Roller Bearing Co., 26 War Lab. Rep. 185.

172. UNION AFFAIRS

172.400 Posting Union Notices

Union is entitled to post official notices on company-furnished bulletin board after notices have been approved by plant personnel department, as was provided in prior contract. Union is not entitled, however, to post notices unapproved by company, as was provided by Regional Board, where company claimed prior provision is part of all contracts between it and other unions and no claim was made that company ever abused its discretion.—Paraffine Cos., 26 War Lab. Rep. 163.

172.600 Union Activity on Company Time and Property

Region I (Boston)

★Company was justified in discharging union member who, during rest periods, conducted mass meetings at which company was attacked and ridiculed and who, on several occasions, came late to work with excuse that he had been distributing union leaflets. Though union contended discharge was unfair labor practice, NLRB official refused to issue complaint in view of fact that company did not object to discussions during rest periods among small groups of workers but only to "organized aspects" of gatherings which employee in question conducted. (Region I—Boston)—Fafnir Ball Bearing Co., 26 War Lab. Rep. 308.

185. UNION RECOGNITION

185.200 Bargaining Recognition

See Collective Bargaining, 32.400.

185.500 Grievance Recognition

★Uncertified and unrecognized union claiming to represent employees of intrastate concern is entitled to establishment of grievance machinery under which employees may be represented by union steward in presentation of grievance and by union committee in furthering processing thereof.

Grievances recognizable under procedure, however, are only those relating to interpretation or application of directed terms and conditions of employment, and Regional Board's order establishing procedure is amended accordingly.—Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

195. UNION SHOP

195.600 Reason for Denying Union Shop

★Board refuses to act on union's request for union-shop clause since plant involved has been closed. Decision is without prejudice to union's right to reopen issue in event plant resumes operations.—Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 247.

205. VACATIONS

205.100 Vacation with Pay

205.106 —Award of paid vacation

★Interstate bus company should grant 6 days' vacation to employees with one to five years' service and 12 days' vacation to employees with five or more years' service, method of computing vacation pay to be determined by parties.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

205.112 —Eligibility for paid vacation

★Full vacation allowance should be paid to drivers who are discharged by interstate bus company or who leave company's employ to enter armed services.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

205.150 —Vacation pay, computation

Region II (New York)

★In computation of vacation pay on basis of straight-time average hourly earnings, shift premiums should be included since, under National Board's policy, only factor to be excluded under term "straight-time earnings" is premium pay for overtime work. (Region II—New York)—American Smelting & Refining Co., 26 War Lab. Rep. 333.

205.300 Vacation Plan

205.320 —Liberalized plan

205.323 — —Award of liberalized plan

Lace employees, all of whom now receive one week's vacation with pay equal to two per cent of annual earnings, are entitled to liberalization of vacation plan to provide second week's vacation after five years' service since (1) National Board granted second week's vacation in cotton garment case and (2) branches of textile industry in which only one week is granted are also branches in which employers provide group insurance at cost of about two per cent of payroll. Because of manpower shortage and to prevent depriving other

employees of work during extended vacation shutdown, however, employers are granted option of giving pay in lieu of second week's vacation.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

As directed by Regional Board, employees are entitled to second week's vacation after five years of service, but Regional Board's order granting pro-rated vacations between one and five years is vacated.—Zephyr Mfg. Co., 26 War Lab. Rep. 155.

★ Employees of shell loading plant who now receive one week's vacation after six months' service are also entitled to second weeks' vacation after five years' service on basis of practice in area. Regional Board's order denying liberalization of vacation plan is amended accordingly.—J-M Service Corp., 26 War Lab. Rep. 239.

★ Regional Board's order granting standard one-for-one and two-for-five vacation plan and providing for prorated vacation benefits for years between one and five is modified by removal of proration clause.—M. Davidson & Sons, 26 War Lab. Rep. 270.

205.332 —Plan less liberal than prior practices

Bonus of three per cent of straight-time earnings which was previously paid to all employees in lieu of vacations should be continued with respect to employees who, at time of vacation period, are not eligible for vacation under vacation plan directed by Regional Board. Board accordingly amends Regional Board's order which directed elimination of bonus plan and establishment of one-for-one and two-for-five vacation plan with vacation pay being three and four per cent of straight-time earnings for one and two weeks' vacation, respectively.—American Brake Shoe Co., 26 War Lab. Rep. 209.

205.700 Bonus in Lieu of Vacation

Bonus of three per cent of straight-time earnings which was previously paid to all employees in lieu of vacations should be continued with respect to employees who, at time of vacation period, are not eligible for vacation under vacation plan directed by Regional Board. Board accordingly amends Regional Board's order which directed elimination of bonus plan and establishment of one-for-one and two-for-five vacation plan with vacation pay being three and four per cent of straight-time earnings for one and two weeks' vacation, respectively.—American Brake Shoe Co., 26 War Lab. Rep. 209.

225. WAGE ADJUSTMENTS (not elsewhere classified)

225.100 Ability to Pay Increased Wages

225.137 —Ability to pay immaterial

Region VIII (Dallas)

Laundry employees are entitled to general eight-cent increase requested by union to correct substandards and maintain intra-plant differentials, such increase bringing minimum rate up to 40 cents an hour and being made retroactive to expiration date of prior contract. Contention that present wage level is already above level supportable by laundry industry generally in region and that, therefore, award is harsh and unrealistic is rejected since award is clearly justified under substandards policy and it is against WLB policy for Board to consider ability to pay. (Region VIII—Dallas)—Galveston Model Laundry et al., 26 War Lab. Rep. 224.

225.300 Effective Date of Wage Adjustments

225.330 —Retroactive effective date

225.331 — —In general

Awarded wage adjustments should be retroactive to date on which parties met with Conciliation Commissioner after written presentation of request for awarded adjustment. Parties' prior agreements have been informal and unwritten and Board's customary criteria for determining retroactive dates, therefore, are not applicable.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

★ "Hours-of-work" clause which had been agreed upon by parties in October 1944 but which was not submitted by company on Form 10 until February 1945 should be made effective as of date shortly after date of agreement, since employer should not be permitted to gain by his delay in submitting Form 10 and awarded date is fair under all circumstances of case.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 282.

225.338 — —Certification of dispute to Board

Region V (Cleveland)

Awarded adjustments should be retroactive to date on which union first presented specific demands to company subsequent to its certification by NLRB. Minority contends that decision contravenes National Board's policy of making first contracts retroactive only to date on which dispute is certified to WLB. (Region

V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

225.343 — —Contract negotiations, commencement

Region V (Cleveland)

Awarded adjustments should be retroactive to date on which union first presented specific demands to company subsequent to its certification by NLRB. Minority contends that decision contravenes National Board's policy of making first contracts retroactive only to date on which dispute is certified to WLB. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

Region XII (Seattle)

Wage adjustments ordered by Board should be retroactive to date on which negotiations for wage increase began rather than to earlier date on which contract expired where negotiation for new contract was delayed for long period and there is no evidence that employer was in any way responsible for delay. In view of fact that prior contract did exist, however, Board sets retroactive date as date on which negotiations began rather than later date on which dispute was certified to Board. (Region XII—Seattle)—Pacific Fruit and Produce Co., 26 War Lab. Rep. 129.

225.344 — —Contract reopening date

★Awarded wage increase should be retroactive to date about one month after union served notice that it desired to reopen contract.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

225.346 — —Date agreed to by parties

★Board's prior order approving parties' agreement on retroactive date is amended on employer's request to require that adjustments be made retroactive to agreed-upon date.—Sheet Glass Cos., 26 War Lab. Rep. 246.

★Effective date of directed decrease in incentive rate should be agreed upon by parties. Regional Board's order setting date one week earlier is amended accordingly.—Aluminum Company of America, 26 War Lab. Rep. 297.

225.353 — —Expiration date of prior contract

Region VIII (Dallas)

Laundry employees are entitled to general eight-cent increase requested by union to correct substandards and maintain intra-plant differentials, such increase bringing minimum rate up to 40 cents an hour and being made retroactive to expiration date of prior contract. Contention that present wage level is already above level supportable by laundry industry generally in region and that, therefore, award is harsh and unrealistic is rejected since award is clearly justified under substandards policy and it is against WLB policy for Board to consider ability to pay. (Region VIII—Dallas)—Galveston Model Laundry et al., 26 War Lab. Rep. 224.

225.364 — —Going rates effective

Wage adjustments directed by Regional Board on basis of area foundry rates established pursuant to "rare and unusual" proceedings should be made retroactive to same date as were rates in "rare and unusual" cases. Board's prior order making instant adjustments retroactive only to date on which "rare and unusual" rates were approved by Regional Board is amended accordingly.—Pettibone Mulliken Corp., 26 War Lab. Rep. 162 *(amending* 24 War Lab. Rep. 625).

225.379 — —Panel hearing

Wage adjustments which result from directed reclassification of cafeteria jobs should be retroactive only to date of panel hearing. Panel recommended no retroactivity on ground that, prior to hearing, union had made only generalized and unapprovable wage demands and had not requested any adjustment of cafeteria jobs as such.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

225.396 — —Wages first became issue in negotiations

Region XII (Seattle)

Wage adjustments ordered by Board should be retroactive to date on which negotiations for wage increase began rather than to earlier date on which contract expired where negotiations for new contract was delayed for long period and there is no evidence that employer was in any way responsible for delay. In view of fact that prior contract did exist, however, Board sets retroactive date as date on which negotiations began rather than later date on which dispute was certified to Board. (Region XII—Seattle) —Pacific Fruit and Produce Co., 26 War Lab. Rep. 129.

225.398 Computation of Retroactive Adjustment

Computation of sums due employees under retroactive application of directed wage-progression plan should be left to parties for settlement reasonably related to principles of established plan, increases granted since retroactivity date to be offset against amounts otherwise due. Re-

gional Board's order setting forth specific method of computation is vacated.—Mines Equipment Co., 26 War Lab. Rep. 148.

225.630 Length-of-Service Wage Increases

Computation of sums due employees under retroactive application of directed wage-progression plan should be left to parties for settlement reasonably related to principles of established plan, increases granted since retroactivity date to be offset against amounts otherwise due. Regional Board's order setting forth specific method of computation is vacated.—Mines Equipment Co., 26 War Lab. Rep. 148.

225.640 Merit Wage Increases

Parties should submit to board of arbitration under contract question of whether change in "employee evaluation plan" made by company and resulting in reduction in rates within established rate range is arbitrable. If question is found to be arbitrable under contract, arbitrators should determine it finally. Industry members dissent, contending that Board, by directing arbitration, is avoiding ruling on novel question, namely, whether employers have right under merit rating plans to give "demerits" within rate ranges as well as merit increases.—Boeing Airplane Co., 26 War Lab. Rep. 50.

★ Employer who had granted merit increases to between ten and thirty per cent of employees each quarter should negotiate with union objective standards of performance to be used in making quarterly reviews, claims of discrimination or improper application of such standards to be submissible to grievance procedure and arbitration. Amount of merit increases is limited to overall average of ten cents per hour in any year. Board accordingly amends Regional Board's order, which required grant of merit increases to all employees making "normal progress" subject to same ten-cent limitation.—Edward Ermold Co., 26 War Lab. Rep. 296 (*amending* 20 War Lab. Rep. 629).

225.755 Reduction in Wage Rates

225.764 —Piece-rate reduction

★ Company is not entitled to reduce disputed incentive rate by 21 per cent but is entitled to reduce it by 7 per cent in accordance with hearing officers' finding that 7 per cent reduction is justified by improvements made in machine involved. Company's petition for review of Regional Board's order is denied.—Aluminum Company of America, 26 War Lab. Rep. 297.

225.770 Review of Wage Rates

225.780 —Contract provision for reopening wage issue

See Contracts: 37.370.

225.900 Voluntary Wage Adjustment

225.940 —Retroactive effect for voluntary adjustments

★ "Hours-of-work" clause which had been agreed upon by parties in October 1944 but which was not submitted by company on Form 10 until February 1945 should be made effective as of date shortly after date of agreement, since employer should not be permitted to gain by his delay in submitting Form 10 and awarded date is fair under all circumstances of case.—Dogulas Aircraft Co., Inc., 26 War Lab. Rep. 282.

225.945 —Wage approval cases

Region III (Philadelphia)

Increased rate ranges previously approved by Board on joint application by parties should be applied, as demanded by union, so that all employees will occupy same relative position within new range as they occupied under old wage scale. Company's contention is rejected that preservation of existing intra-plant relationships under new rate ranges will result in average increase in excess of that originally approved by Board. (Region III —Philadelphia)—Atlantic Steel Castings Co., 26 War Lab. Rep. 102.

225.968 Wage Increase to Offset Shorter Hours

★ Employees are not entitled to adjustment of rates necessary to maintain weekly salaries at level prevailing before Regional Board reduced straight-time hours from 54 to 48 weekly. Petition for review of Regional order reducing hours and salaries is denied but denial is without prejudice to either party's right to reopening wage issue in event of change in national wage stabilization policy.—Reno & Sparks Nevada Grocery Industry, 26 War Lab. Rep. 296 (*amending* 21 War Lab. Rep. 308).

235. WAGE DIFFERENTIALS

235.180 Inter-Industry Differential

Union's request that maintenance rates be increased in line with rates paid by company's subcontractors to construction employees is denied since rates paid to construction workers are generally higher than rates paid in industry in general.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

245. WAGES—COST-OF-LIVING ADJUSTMENTS

245.300 15 Per Cent Rule

245.310 —Application of 15 per cent rule

245.3101 — —In general

Newspaper Commission's order denying union request for application of increase due under Little Steel formula to all minimum rates but granting increase in one classification and modifying minimum rates for several other classifications is affirmed. Commission is requested, however, to examine question of raising contract minima in light of Board decisions made subsequent to date on which Commission's order was issued and in light of any changed circumstances since case was considered by Commission.—New York Herald-Tribune, 26 War Lab. Rep. 18.

Newspaper Commission's award of general increase of $2.50 weekly to employees earning less than $50 is remanded for reconsideration in light of current policies. Award was made on basis of finding that, under interpretation by War Labor Board of arbitration award involving same parties and involving question of calculation of Little Steel increase, employees were entitled to further average increase of 77 cents a week. Instead of granting 77 cents to all employees, however, Commission made equivalent award of $2.50 to employees earning less than $50 on ground that it is WLB policy to favor low-paid employees in making cost-of-living adjustments.—New York Herald-Tribune, 26 War Lab. Rep. 18.

245.3195 — —Unit for application of rule

Regional Board should reconsider denial of Little Steel wage adjustment to employees of one commercial printing firm where denial was result of applying formula to the three commercial printers in area as a unit. Parties contended (1) that Little Steel increase would be due if formula were applied to instant company as separate unit and (2) that, although rates are identical with those paid by other two firms, they are below those paid by newspapers in area—Lyons, Harris & Brooks Printing Co., 26 War Lab. Rep. 197.

245.340 —Prior increases exceeding 15 per cent

Union's request for general wage increase is denied since, among other things, prior increases since Jan. 1, 1941, have exceeded 15 per cent.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

250. WAGES—GOING WAGE RATES

250.050 Application of Going Rate Criterion

250.051 —In general

Region I (Boston)

Union of bakery salesmen negotiating first contract with companies in local area where majority of firms are unorganized is entitled to wage increase from $16 per week plus 7 per cent commission to $16 per week plus 8 per cent commission, despite contention that very large proportion of baking industry in New England area is covered by master contract requiring rate of $18 and 8 per cent commission. Present award will go part way toward eliminating inequity between instant companies and majority of industry in New England area but will not equalize rates of newly organized companies competing in unorganized territory with rates of companies that have been under contract for eight years. (Region I—Boston) —Genest Bros., Inc., Drake Bakeries, Inc., 26 War Lab. Rep. 111.

250.052 —Appropriate bracket

Union's request that maintenance ra be increased in line with rates paid by company's subcontractors to construction employees is denied since rates paid to construction workers are generally higher than rates paid in industry in general.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

250.100 Adjustment to Minimum Going Rates

★ Drivers employed by interstate bus company are entitled to increase bringing rate for first two years to 3.5 cents per mile and rate after two years to 4 cents where (1) company offered such rates on basis of rates paid by local bus companies with which it competes and (2) average rate paid by all bus companies in states served by company is 4.23 cents per mile. Such award is without prejudice to determination of any further increase justified by slowdown regulation of Office of Defense Transportation. — Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

★ Patternmakers are entitled to increase in wage rate to bring their rate up to minimum of revised bracket established by Regional Board, and employees in two interrelated job classifications are entitled to corresponding rate increases so that proper intra-plant differentials may be

maintained.—Goodyear Aircraft Corp., 26 War Lab. Rep. 279.

250.060 Incentive work

Regional Board's order raising base pay of commission and non-commission bakery driver salesmen from $55 to $60 for 48-hour workweek is vacated where, contrary to WLB policy, Regional Board included incentive earnings in data used in setting bracket in order to justify $60 bracket.—Seattle Bakers Bureau, Inc., 26 War Lab. Rep. 201.

250.200 Adjustment Above Minimum Going Rates

250.205 —Denial of adjustment

Union requests for general wage increase is denied since existing rates are among highest in area and prior increases since Jan. 1, 1941, have exceeded 15 per cent. —Curtiss-Wright Corp., 26 War Lab. Rep. 134.

★ Employees of aircraft company's cafeteria are not entitled to wage increase where existing rates were approved by Board approximately one year ago and are those presently in effect in other comparable companies.—Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 247.

250.300 Determination of Going Rates

Regional Board's order raising base pay of commission and non-commission bakery driver salesmen from $55 to $60 for 48-hour workweek is vacated where, contrary to WLB policy, Regional Board included incentive earnings in data used in setting bracket in order to justify $60 bracket.—Seattle Bakers Bureau, Inc., 26 War Lab. Rep. 201.

250.960 Transit Industry Formulae

250.967 —Suburban transit line

Region XII (Seattle)

Rate of suburban bus drivers is raised from $1.00 to $1.05 per hour since (1) under national transit policy suburban rates may be raised to next five-cent interval below average transit rate in area in April 1944, (2), as result of retroactive adjustment of rate of dominant property from $1.05 to $1.08, average rate effective in area on April 1, 1944, was above rather than below $1.05, and (3) wartime changes in conditions justify reduction in differential between suburban and dominant rates, Prior denial of increase, which was based on assumption that dominant company's April 1944 rate was $1.05, is therefore reversed. (Region XII—Seattle)—East Side Busses, Inc., et al., 26 War Lab. Rep. 93.

260. WAGES—INCENTIVE WAGE SYSTEMS

260.100 Adjustment of Piece Rates

260.124 —Intra-company inequities

Lace manufacturers should grant five per cent increase in contractual minimum incentive rate (minimum rack price) since (1) parties came very close to agreeing on such increase, (2) not more than 40 per cent of employees will be benefited thereby, such employees being lowest paid group, and (3) essential purpose of increase is to eliminate intra-plant inequities.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

260.130 —Reduction in piece rates

★ Company is not entitled to reduce disputed incentive rate by 21 per cent but is entitled to reduce it by 7 per cent in accordance with hearing officer's finding that 7 per cent reduction is justified by improvements made in machine involved. Company's petition for review of Regional Board's order is denied.—Aluminum Company of America, 26 War Lab. Rep. 297.

260.184 Downtime

Union's request that lace manufacturers pay for work of tying in beams, as such, is denied since, among other things, (1) for years existing incentive rates have, in effect, compensated for machine downtime necessary for tying in beams and (2) union failed to present any factual data showing that there is loss of earnings on styles where there are many beams.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

265. WAGES—INEQUALITIES

265.100 Inequalities as Reason for Wage Adjustment

265.135 —Inequalities within plant

Lace manufacturers should grant five per cent increase in contractual minimum incentive rate (minimum rack price) since (1) parties came very close to agreeing on such increase, (2) not more than 40 per cent of employees will be benefited thereby, such employees being lowest paid group, and (3) essential purpose of increase is to eliminate intra-plant inequities.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

Union's request that lace manufacturers pay for work of tying in beams, as such, is denied since, among other things, (1)

for years existing incentive rates have, in effect, compensated for machine downtime necessary for tying in beams and (2) union failed to present any factual data showing that there is loss of earnings on styles where there are many beams.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

Airframe company and union should evaluate cafeteria jobs and place them within labor grades which are now applied to production and maintenance work. Company's main competitor in area has slotted its cafeteria jobs into its factory labor grades and similar slotting in instant case should eliminate whatever intra-plant inequities now exist in instant company. —Curtiss-Wright Corp., 26 War Lab. Rep. 134.

★ Patternmakers are entitled to increase in wage rate to bring their rate up to minimum of revised bracket established by Regional Board, and employees in two interrelated job classifications are entitled to corresponding rate increases so that proper intra-plant differentials may be maintained.—Goodyear Aircraft Corp., 26 War Lab. Rep. 279.

265.158 —Inequalities between unionized plants

Region I (Boston)

Union of bakery salesmen negotiating first contract with companies in local area where majority of firms are unorganized is entitled to wage increase from $16 per week plus 7 per cent commission to $16 per week plus 8 per cent commission, despite contention that very large proportion of baking industry in New England area is covered by master contract requiring rate of $18 and 8 per cent commission. Higher rate is result of eight years' negotiation and present award, which is equal to rates paid by majority of industry prior to Trucking Commission's directive order fixing $18 and 8 per cent for master contract, will go part way toward eliminating inequity between instant companies and majority of industry in New England area but will not equalize rates of newly organized companies competing in unorganized territory with rates of companies that have been under contract for eight years. (Region I—Boston)—Genest Bros., Inc., Drake Bakeries, Inc., 26 War Lab. Rep. 111.

265.300 Creation of Inequalities as Ground for Denying Adjustment

Union's request that maintenance rates be increased in line with rates paid by company's subcontractors to construction employees is denied, since among other things, requested adjustments would create inequalities in plant's existing job classification system.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

275. WAGE—JOB RATES

275.500 Job Rates for Transferees Within Plant

West Coast Lumber Commission

Lumber pliers assigned to lower-rated jobs should receive rate of pay for such lower-rated jobs when assignment is made for convenience of employees. Order is within intent of parties' contract, which provides that company may, with their consent, transfer employees to lower-rated job in lieu of layoff and pay them at rate of position to which transfer is made. (West Coast Lumber Commission) —McGoldrick Lumber Co., 26 War Lab. Rep. 216.

285. WAGES—MINIMUM RATES

285.400 Increase in Minimum Rates

285.410 —Cost-of-living adjustment

Newspaper Commission's order denying union's request for application of increase due under Little Steel formula to all minimum rates but granting increase in one classification and modifying minimum rates for several other classifications is affirmed. Commission is requested, however, to examine question of raising contract minima in light of Board decisions made subsequent to date on which Commission's order was issued and in light of any changed circumstances since case was considered by Commission.—New York Herald-Tribune, 26 War Lab. Rep. 18.

295. WAGES—SUBSTANDARD RATES

295.200 Elimination of Substandard Rates

Region VIII (Dallas)

Laundry employees are entitled to general eight-cent increase requested by union to correct substandards and maintain intra-plant differentials, such increase bringing minimum rate up to 40 cents an hour and being made retroactive to ex-

piration date of prior contract. Contention that present wage level is already above level supportable by laundry industry generally in region and that, therefore, award is harsh and unrealistic is rejected since award is clearly justified under substandards policy and it is against WLB policy for Board to consider ability to pay. (Region VIII—Dallas)—Galveston Model Laundry et al., 26 War Lab. Rep. 224.

295.600 Substandard Rates as Ground for General Increase

Region III (Philadelphia)

Hourly wage rates for all job classifications of restaurant employees in five department stores are raised by 2½ cents per hour under Board's authority to eliminate substandards where some rates are substandard and general increase rather than tapering adjustments is indicated by intra-plant considerations. Aggregate amount awarded equals aggregate which would have been required to establish minimum standard rate of 55 cents for all non-tipped employees and rate of 45 cents for those receiving tips and meals. (Region III—Philadelphia)—Labor Standards Assn., 26 War Lab. Rep. 231.

330. WORKING CONDITIONS

330.920 Work Rules

Company should discontinue present practice of requiring employees to compute their own daily earnings, except that workers should maintain production record on form supplied by company, where union contends that (1) practice leads to confusion and disputes, (2) calculation of pay is function of management, and (3) present time allowance of five minutes is inadequate to cover time required for complicated calculations.—Firestone Rubber & Metal Products Co., 26 War Lab. Rep. 1.

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute. Board, however, vacates that part of Regional order which (1) held that company had violated Regional Board's preliminary status quo order by making reinstatement of newly transferred employees conditional upon observance of shop rule and (2) ordered company to grant back pay to such employees for days lost between preliminary and final status quo orders.—General Motors Corp., 26 War Lab. Rep. 53.

Immediate submission to umpire under contract is required as to any question concerning disciplinary action taken by company against (1) employees who were suspended for violating shop rule and (2) employees who walked out in sympathy with suspended employees. Umpire may consider application of rule under all circumstances of case which include fact that rule was not in effect in plant from which suspended employees had been recently transferred. Union may present to umpire question as to whether and to what extent union has right under existing contract to negotiate subject of shop rules.—General Motors Corp., 26 War Lab. Rep. 53.